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The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page iii.

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Current Topics.

The Prince as a Bencher.

FOR THE third time since the Prince of Wales became a bencher of the Middle Temple he will dine in hall this term, the occasion chosen being Grand Night on 14th November, when he will assist his fellow Masters of the Bench in entertaining a distinguished party of guests. As senior Bencher by virtue of his rank he will sit next the Master Treasurer, Sir ELLIS HUME-WILLIAMS, K.C., and they will lead the procession up the ancient hall, which has seen so many famous banquets. It is the rule in the Middle Temple that at none of its ordinary dinners—and Grand Night dinner is an ordinary one for students in their three years' course of such repasts—may there be any speeches, with the sole exception that on Grand Night the royal and loyal toast is given and drunk in silence. A notable exception was deliberately made soon after the end of the war, when on 2nd July, 1919, the Prince of Wales was made student, barrister, and Bencher on the same evening, and in a short impromptu speech he said: "I feel very embarrassed standing before you in this gown. I cannot pretend that it makes me feel learned in the law. In fact I feel rather magnificently camouflaged. But I do want you to treat it as a symbol of my desire to study and associate myself with the great legal institutions upon which the stability and welfare of our great country so largely depend. I also want you to treat it as a symbol of my desire to maintain that intimate connexion which binds my house with the courts of justice, and the more intimate tie between my family and the two Societies of the Temple."

Royal Family and Inns of Court.

THE LAST reference was to the fact that his grandfather KING EDWARD VII as Prince of Wales was for many years a Bencher of the Inn and had filled the office of Treasurer. That Prince on one occasion broke the "no speech" tradition of the Society by proposing the health of the then Treasurer, who duly called the Royal Bencher to order. The Duke of York is the senior Bencher of the sister Society of the Inner Temple. As to the other Inns, Lincoln's has the privilege of the King as its senior Bencher, and it will be recalled that it was the beginning of his grave illness nearly a year ago which prevented His Majesty from attending the formal opening of the restored Old Hall, Her Majesty the Queen officiating in his stead. The Prince Consort was a member of Lincoln's Inn. Gray's Inn possesses as Benchers the Duke of Gloucester, the Duke of Connaught, and Prince Arthur of Connaught. QUEEN ELIZABETH and the Stuart Kings all maintained a close contact with the Middle Temple, the beautiful hall of which was completed some years before the Armada. In those days the Inns of Court were both schools of law and residential universities, and it was customary for the gentlemen of the Inns of Court to indulge in banquets and revels on a scale which would in these more sober days be considered startling, and that pleasure-loving monarch, CHARLES II, used to participate in the revels with great zest. Here also QUEEN ELIZABETH saw a special performance of "Twelfth Night" in 1601, at which SHAKESPEARE was said to have been present himself.

Prompt Prosecution.

"IF A crime is discovered it is a public duty to make the charge at once." This dictum by a metropolitan magistrate must not be taken out of its setting, or it will be unduly wide. Where a crime is against an individual he must be allowed to exercise his private right of forgiveness if he choose. Here everything depends on the motive, for, in a very true sense, no offence against the law is a merely private matter, and if through nothing but laziness or vague good nature the persons appointed by law to deal with its infractions are not invoked, the one who refrains from prosecution is a bad citizen. If reluctance to prosecute be due to a real forgiving spirit and a considered view that a warning to the criminal may be enough to secure his reformation, the failure to call in the police may be fully justified. The magistrate was dealing with another matter, the keeping a charge hanging over the head of a person who has been caught in a criminal action. The accused before him had stolen twenty-five pounds from his employers by a device which threw discredit on their business methods, and for nearly three months they did nothing. In explanation of the unwarrantable delay they

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pleaded the need of an audit and a board meeting. We agree that this is an entirely improper proceeding. "It was," said the magistrate, "due to nothing but ignorance of their duty as citizens. A discovered crime should be dealt with at once."

The Legal Position of a Bicycle Thief.

In an inquest held by Dr. Danford Thomas on a young man who, riding a bicycle he had just stolen, was killed in a collision, the coroner made some interesting speculations on the points of law which arose or might have arisen. One of his suggestions was that if the collision had resulted in the death of another person, the bicyclist in pursuing his felonious career would have been guilty of murder. With due respect to the learned coroner, however, his train of reasoning may be questioned. His statement was, of course, founded on the proposition that one who, in the course of committing a felony kills another without intending to do so, is nevertheless guilty of murder, because the necessary malice is always imputed. This was fully discussed by Stephen, J., in *R.* v. *Serné* (1887), 16 Cox C.C. 311, a case in which it was alleged that the prisoners had set fire to a shop and dwelling-house for the sake of the insurance, and, in the conflagration, the son of the first prisoner, asleep at the time, had been burnt to death. He dealt with the well-known illustration of the man shooting at a fowl to steal it, and accidentally killing a human being instead, and doubted whether the doctrine would extend to such a case. He had no hesitation in ruling, however, that it would apply to arson for insurance money, if the offender knew the premises set on fire were inhabited. In respect of the bicycle, however, it may be submitted on the usual authorities as to asportation, such as *R.* v. *Coslet* (1782), 1 Leach 236, and *R.* v. *Taylor* [1911] 1 K.B. 674, that the felony was complete when the machine had been seized and moved. On this supposition, the cyclist's continuing offence, if any, would be reckless riding, which is not felony. Probably a motor bandit who killed a policeman or other person while starting a car with the intention of stealing it would be guilty of murder. If he killed anyone in flight, however, it might be held an aggravated case of manslaughter. The coroner further speculated on the position of the owner of the stolen bicycle. It seems fairly clear that an action would lie at his instance against the personal representatives of the deceased thief under the Administration of Estates Act, 1925, s. 26 (5) (superseding s. 2 of the Civil Procedure Act, 1833), but probably the right of action would not be much value. If the owner had recourse to such an action he would have to prove the death of the thief as the reason why he had not been prosecuted to conviction, see cases collected in "Pollock on Torts," 13th ed., p. 206. It seems scarcely necessary to add that the owner of the bicycle would not be responsible for any harm done by the thief when riding it.

The Assessment of Sporting Rights.

We understand that the much disputed question as to whether sporting rights over agricultural land, which are reserved by the owner on the letting of the land and not separately let, can properly be assessed separately from the land, or whether they should be assessed with the land and so get the benefit of de-rating, is likely to be authoritatively decided by the High Court in the near future. Until the Agricultural Rates Act, 1896, came into force there was no question that such rights had to be included in the assessment of the land under the Rating Act, 1874. It was often contended, however, that the result of the Act of 1896, coupled with the Order of the Local Government Board made thereunder, was to authorise overseers and assessment committees to insert such rights in the separate column of the valuation list and rate book appropriated to non-agricultural hereditaments. The Central Valuation Committee recommended this course to be adopted for new assessments under the R. & V.A., 1925, whilst the Rating Surveyors' Association intimated that in their view such recommendation was contrary to law. We learn that the Treasury Solicitor, who represents all district valuers in connexion with legal questions arising out of the special lists, which are being prepared under the R. & V. (Apportionment) Act, 1928, has expressed a willingness to agree in stating a case, if an appeal is entered against the decision of any assessment committee adverse to the contention of the landowner that the assessment of agricultural land must include such reserved rights. The Treasury Solicitor is not, however, concerned with any general valuation list in which such rights may be entered as a separate hereditament, and of course no entry appears of these rights in any draft special list. It seems, therefore, that to give the Treasury Solicitor a standing in the matter, it has been necessary for a landowner to carry in an objection to a draft special list on the ground that some farm which he has let is *under*-valued in the draft special list by reason of the fact that the value of the reserved sporting rights has not been taken into account —a somewhat Gilbertian situation. Apart from the effect of the Act of 1896 and the statutory order thereunder upon the provisions of the Rating Act, 1874, it remains to be seen whether the repeal (as from 1st April, 1930) of the Agricultural Rates Acts by the Local Government Act, 1929, affects the question at issue.

Education Authorities and Negligence.

A case heard in Leicester County Court is of some interest as to the degree of care which the law requires from teachers in respect of the children under them. In the Wyggeston Grammar School for Girls there was a gymnastic class under a competent mistress. One exercise was running up to and vaulting a "vaulting horse," failure to clear which might obviously result in a nasty accident unless someone was at the other side to catch the pupil who could not jump clear, or break her fall. The rule was to appoint two persons for this duty. The teacher, who could not personally attend to it because she was instructing another class, appointed two girls as "catchers." Owing to the alleged weakness of one of them, a pupil fell and was injured. In the action for negligence which followed, a number of experts were called, and persisted in the view that the mistress had been guilty of no error of judgment in this delegation, but the jury found for the plaintiff and against the Education Authority. *Smith* v. *Martin* [1911] 2 K.B. 775, was cited, but the defence there raised, that the teacher's order was not within the scope of her authority, would not have been available in the present case. In fact, it failed in *Smith* v. *Martin*, on the ground that children are required to obey their teachers without question, with the consequence that, even if the teacher gave an order for her own purposes (in that case, to see to a fire on which she proposed to cook her dinner), the Education Authority was liable. *Shrimpton* v. *Hertfordshire C.C.* (1911), 55 Sol. J. 270, was also cited, in which a child was injured on the way to school in climbing into a conveyance voluntarily provided by the council. These cases were decided under the Act of 1902, corresponding provisions in that of 1921 being ss. 17 (1), 28 and 29. Possibly the clearest statement of the liability of an education authority or schoolmaster is that of Darling, J., in *Shepherd* v. *Essex C.C.* (1913), 29 T.L.R. 303, to the effect that the duty of a schoolmaster is that of a careful parent. Consequently, in *Chilvers* v. *L.C.C.* (1916), 32 T.L.R. 363, the defendants were exonerated from the consequences of an accident which might have happened in any well-regulated nursery. There was a similar result in an action against the proprietor of a preparatory school at Seaford in *Dixon* v. *Roper* (1922), *Times*, 3rd Feb., in which Mr. Justice Roche held that the defendant was not liable for injuries to a child of eight years of age who had swallowed a whistle contained in a cracker given to him by the matron. In the *Leicester Case* above, the evidence of negligence, as reported in a local paper, appeared to be slight, but the jury accepted it.

Parking Places for Motor Cars.

A QUESTION of considerable interest to local authorities was decided by the Court of Appeal in *Attorney-General* v. *Sunderland Corporation* (reported elsewhere in this issue). In that case, the defendants had acquired in 1896 about 1¼ acres of land for the purposes authorised by the Public Health Acts, and by s. 7 of the Post Office Act, 1891. The land in question was purchased for four different objects, namely: (1) to provide a site for a new post office; (2) for the widening of adjoining streets; (3) for the formation of new street across the land; and (4) to provide public walks or pleasure grounds. The defendants submitted a plan to the Local Government Board showing how it was proposed to use the land, and the Board duly approved the purchase. In August, 1927, the defendants decided to use part of the land acquired in 1896 as a parking-place for motor cars, but this decision was opposed by about ninety owners or occupiers of adjoining premises. It was contended that, as the land had been purchased for the four different specific objects above-mentioned, it was *ultra vires* for the defendant corporation to use the land for a motor-car park. In this connexion we must refer to the Public Health Act, 1875, s.154, which provides that: "Any urban authority may purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street, or (with the sanction of the Local Government Board) for the purpose of making any new street," and by s. 164 of the same statute, urban authorities are authorised to provide places of public recreation. Then the Public Health Act, 1925, s. 68, provides that: (1) Where for the purposes of relieving or preventing congestion of traffic it appears to the local authority to be necessary to provide within their district suitable parking places for vehicles, the local authority may provide such parking places in accordance with the provisions of this section, and for that purpose may (*a*) acquire land suitable for use as a parking place; or (*b*) utilise any lands which may lawfully be appropriated for the purpose; or (*c*) by order authorise the use as a parking place of any part of a street within the district, not being a street within the London traffic area. The Court of Appeal (affirming the decision of EVE, J.), after reading the above sections of the Public Health Acts, 1875, 1925, were of the opinion that the discretion of the defendant corporation could not be circumscribed in the way suggested by the relators who objected to the proposed parking place.

It was held, therefore, that the defendant corporation were entitled to make a parking place for motor cars under the powers conferred by s. 68 (1) (*c*) of the Public Health Act, 1925.

Centralisation of Local Government.

THE MAZE of legislation to which the public in general, and the profession in particular, have been subjected during the past few years has made it difficult for the ordinary practitioner to maintain touch with the changes in local government which are now pending as the result of the passing of the Local Government Act of this year. One of the main effects of this measure has been to centralise the control of local government affairs in county councils, who will, after the 1st April, 1930, become the financial and executive authority for poor law purposes and also as regards all highways within the county, other than unclassified roads within urban districts. The observations of the late Minister of Health, Mr. NEVILLE CHAMBERLAIN, during the passage of the Bill through the House of Commons, suggested that he was somewhat enamoured of county council control and administration, and there is, of course, very much to commend this course, particularly if the new arrangements for Exchequer grants, as ancillary to de-rating, are to operate simply and satisfactorily from the point of view of the central authorities in London. At the same time we feel that the greatest possible care should be taken to carry out the new order of things in such a way as to prevent the breaking up or weakening of the smaller authorities. As the EARL OF ONSLOW (who presided over the Royal Commission on Local Government) stated in the House of Lords during the concluding stages of the Bill: "You should offer every opportunity and every temptation to the best possible people to serve on all local governing bodies . . . and, in order to tempt people and give them occupation, you must give them really good and sound work to do." Both he and other noble lords emphasised the necessity for giving the greatest possible responsibility, compatible with efficiency, to the rural councils, and we take the opportunity of drawing attention at this critical time to the importance of this consideration being borne in mind. There is undoubtedly an inherent dislike on the part of the average Britisher to beaurocratic control, and unless county councils operate their new powers in such a way as to co-operate to the maximum degree with the smaller authorities, local government, as we have come to know and regard it, will be superseded by a centralised officialdom.

Re-arrangement of County Districts.

WE WOULD, however, draw particular attention to s. 46 of the Local Government Act, 1929, to the duty of every county council to carry out a general review of all the county districts and submit proposals for such changes as are considered desirable. The section in question enables boundaries of parishes to be altered and districts and parishes transferred from one authority to another, and schemes are already being prepared in different parts of the country to give effect to this statutory requirement. Whilst we would readily agree that many county districts, both urban and rural, are too small to function satisfactorily, there is in some quarters a tendency to make the unit of local government—so far as the county areas are concerned—somewhat large and unwieldy by attempting combination on too extensive a scale. If the elected representatives are called upon to travel unduly long distances to and from their meetings, it will be impracticable to induce the active business man to offer his services, and there is reason to believe that county councillors themselves in many parts of the country are feeling that the demands on their time and energy are reaching breaking point. Unfortunately, the procedure whereby schemes of this nature are carried through operates somewhat behind the scenes, and all too often drastic changes are made with respect to these matters before the general public realise what has been done. A look-out should be kept by the representatives of the ratepayers for schemes of this nature, and they should realise that they owe a duty to future generations to make themselves acquainted with the details of such proposals, with due regard to the interests of councillors in rural areas, who—whilst prepared to attend meetings at the nearest market town—are not in a position to make journeys much further afield as the result of an extravagant centralisation of local government.

A Bar Examination Poser.

THE FOLLOWING question from a Bar examination paper is quoted in a newspaper: Mr. McA partook of lunch in an XYZ café at a table where Mr. B, a stranger, was also seated. The two were waited on by Miss C. B, having finished his repast, placed sixpence on his plate as a gratuity to Miss C, and departed, paying his bill. McA hastily concluded his own meal, took up the sixpence and placed it on his own plate as and for his gratuity to Miss C, paid his bill, and departed. What, if any, crime has McA committed? Probably the answer that he belonged to a country where the person setting the question was badly stung, perhaps by hotel bills on a northern holiday, must be ruled out. A tip of sixpence in a "café" indicates overfeeding, extravagance, or strong affection for the serving maid. The coin on the table ceased to be the property of B when he placed it there, and its

ownership depended on the question whether the XYZ company allowed its waitresses to accept gratuities. If so, the waitress took it, if not, its disposal was subject to the company's direction, and the property passed to the company. McA undoubtedly asported the coin, but not with the intention of permanently depriving the owner of it. In effect, he took it for a joy-ride from one plate to another. No crime, therefore, and the case must be remitted to the theologian to apportion the seven deadly sins to it—sloth in failing honestly to earn the extra sixpence necessary for the gratuity, pride in the display of generosity, etc. On their next visits, Miss C would apportion the glad-eye to McA, and the frozen mitt to B, instead of *vice versa*, according to their real deserts. This might be evidence that McA had obtained credit by false pretences, but, apart from breach of promise, the credit reaching to and weighed in a maiden's heart is a matter imponderable in law.

Motorists' Rights.

WHILE THE rights of the general public, as Mr. Justice LUXMOORE pointed out in the *Mayfair Hotel Case* last July, are higher than those of private occupiers, the fact still remains, as he also observed in his judgment, that persons occupying abutting premises have still the right to reasonable use of the highway for access and for loading and unloading goods. The occupier has always been considered to have the right to a reasonable access for himself and his guests, or, if he is a tradesman, for his customers. This may sometimes involve slight inconvenience to other users of the highway by reason of vehicles standing outside premises, but such slight inconvenience does not prevent the reasonable exercise of that right. A recent case at Greenwich Police Court, in which a prosecution for obstruction against a woman motorist was dismissed, has given rise to a good deal of discussion. A representative of a well-known motoring organisation seems to have tried to arrive at a time limit, which we should think impossible; but he also expressed the sound opinion that circumstances and local conditions must govern the question, and that motorists must have shopping facilities. It is easy to picture certain spots where no one ought to leave a car, even for a minute or two, because hopeless congestion, or may be danger, would inevitably result. It is equally easy to suggest places where vehicles might remain for hours and cause no trouble. What is altogether unreasonable is to use a busy street as a parking-place while a number of appointments are kept or shops visited, or while a protracted interview takes place. It is quite reasonable, save in exceptional circumstances, to pull up for a few minutes outside a shop or a private house in order to transact business, pay a brief visit or to deliver goods. The Motor Cars (Use and Construction) Order prohibits "unnecessary obstruction," thereby recognising the fact that some obstruction can hardly be avoided in the ordinary use of the streets. In the Greenwich case, the motorist was said to have drawn up for a few minutes in a one-way street, outside a shop. The risk of obstruction and confusion is generally less in a one-way street, and the learned magistrate found that the defendant in this instance had not caused obstruction. There must, of course, be reasonableness on both sides. Police have the difficult duty of preventing undue congestion, and of keeping the traffic sufficiently fluid. Drivers of vehicles also have their various forms of business to transact, and must not be unnecessarily hampered. Misunderstandings are fortunately rare, and the relations between police and motorists seem to be improving. Now and again, however, it is well that magistrates should, as in this case, remind the police that the motorist has a perfect right to pull up for a reasonable time.

Per Working Hatch.

AN INTERESTING case dealing with the calculation of lay days for the purpose of estimating the amount of dispatch money payable under a charter-party came before a Divisional Court on the 17th October on appeal from a decision of Judge SHEWELL COOPER given at the Mayor's and City of London Court. The appellants were the owners and the respondents the charterers of the steamship "Sandgate," which was chartered to carry a cargo of coal from Cardiff to San Rosario. By clause 7 of the charter-party it was provided that cargo was to be taken from alongside by consignees at the port of discharge at the average rate of 125 tons per working hatch per day, and a marginal note further stipulated that they were not obliged to take cargo in accordance with clause 7 at a higher rate than 500 tons a day. The coal cargo in question was loaded in four holds, each of those holds having one hatch, and the hold quantities were as follows: No. 1, 727 tons 17 cwt.; No. 2, 1,603 tons 19 cwt.; No. 3, 1,418 tons 16 cwt.; and No. 4, 834 tons; making a total of 4,584 tons 12 cwt. Dispatch money was to be payable at the rate of £15 for a running day in respect of all working time saved at the port of discharge, and the respondents, claiming that they had saved 3 days 23 hours, deducted £59 7s. 6d. as dispatch money from the freight. The appellant shipowners, however, calculated that only 5½ hours were saved, and they brought the action in the court below to recover £55 18s. 9d. as dispatch money improperly deducted from freight. In arriving at their calculation of the lay days the charterers had divided the number of tons of coal in No. 2 hold, which contained the largest amount, by 125. The shipowners, on their part, had divided the total amount in the four holds, 4,584 tons 12 cwt., by the average rate of discharge of 500 tons for the four hatches. The judge in the court below decided in favour of the charterers and that view has been upheld in the Divisional Court. What the charterers had undertaken, said Lord MERRIVALE, was to discharge at the rate of 125 tons a working hatch a working day, so that the matter turned on the meaning of the term "per working hatch"; and Mr. Justice HILL pointed out that although the charterers recognised the obligation to take delivery at the rate of 500 tons a day so long as all four holds contained cargo, they contended that the total rate of discharge became reduced by 125 tons as each hold became empty, although the rate per working hatch remained the same. Leave to appeal against the decision of the Divisional Court was granted by the Court of Appeal on the 21st October.

A Trade Union Case.

SOME TIME ago the Amalgamated Engineering Union obtained an order at a London court against one of their branch officials for wilfully withholding contributions paid to him by members of the Union contrary to s. 12 of the Trade Union Act, 1871. The magistrate who made the order decided that it should be enforced as a civil debt. As this meant that imprisonment could be imposed only if it was proved that the defendant had had the means to pay it since the making of the order—in many cases an impossibility—the trade union authorities asked for a case to be stated on the point. The Divisional Court held that, although there was misconduct of a criminal character, the magistrate was not bound to order imprisonment in default of payment, but might if he thought proper treat it as a civil debt. Up to now it has been generally assumed that a sum of money ordered to be paid by a summary court was enforceable as a civil debt or else by immediate imprisonment, but not by whichever method a magistrate in his discretion chose to employ. In drawing up modern statutes, the draughtsmen are usually mindful of the distinction between these two modes of enforcement, which is a most important one for the complainant no less than the defendant, and have clearly stated when a sum is to be recovered as a civil debt. That the distinction was not present to the minds of the draughtsmen of s. 12 of the Trade Union Act, 1871, is immediately apparent on a glance at its wording, and this need surprise no one for

the "civil debt" only came into existence with the Summary Jurisdiction Act, 1879. The proceedings, for example, are instituted on "complaint" and not on "information," though they are for acts of a criminal nature somewhat similar to fraudulent conversion. Indeed, there are several cases under the section which lay down that, before an order can be made, the court must find that the defendant has been guilty of criminal misconduct. If, however, in spite of this, it be contended that the use of the words "complaint" and "order" make the proceedings civil and not criminal in character, there are further difficulties to be explained when some way on in the section the word "penalty" is encountered and the defendant is described as the "person so convicted." Generally speaking, too, civil debts are sums of money owing for some service rendered, for gas supplied, for electricity, for the care of a relative by the guardians, and so on. But in these cases there were no services rendered. There was no indebtedness on the part of the official to the union. He was entrusted with money which he should have passed on. He had not borrowed it, and the union had done nothing which made the official indebted to it, and the money, though physically in the defendant's possession, was, from the moment a member of the union parted with it, the property of the union. The decision will greatly impair the usefulness of the section. Most of the defaulting officials are men of straw, and there will be a strong likelihood that legal proceedings will prove ineffective if civil debt procedure is followed, and the ability to pay of the official must be shown. In most cases, where union funds have been misappropriated, however, the same evidence would support a conviction for fraudulent conversion, and in future proceedings will probably be taken for that offence.

A Bequest for Conciliation.

A MR. MITTEN, an American millionaire, is reported to have left the residue of his estate in trust for "the promotion and advancement of the cause of co-operation between capital and labour." He had vast interests in the transport system of Philadelphia, so presumably he was domiciled in Pennsylvania. Local lawyers have advised that the bequest is invalid, but the son, presumably the sole next of kin, has stated that he will give effect to it. Were the testator English, the bequest would have to be tested by Lord MACNAGHTEN'S classification of charitable purposes in *Special Commissioners* v. *Pemsel* [1891] A.C. 331, at p. 583, and, it being outside the first three purposes, namely, for the relief of poverty, for education, and religion, the issue would be whether it was for a purpose beneficial to the community. The absolute negative of co-operation between capital and labour is a strike or lock-out, both always highly detrimental to the community, and, on a large scale, disastrous. Thus, a fund to be directly applied for the purpose of averting such calamity could hardly fail to be beneficial to the community, and no doubt a judge would "lean" towards validation, and rightly. American cases cannot here be fully discussed, but an English Attorney-General, seeking to establish the validity of this bequest, would seem to have a fair chance, if it were not too vague for a proper scheme. The fact that the wealthy might benefit, as they certainly would if a strike was averted, would not in itself invalidate the gift, a point brought out in *Verge* v. *Somerville* [1924] A.C. 496. A large number of persons, whether rightly or wrongly, regard anti-vivisection and vegetarianism as mere fads, yet bequests for these purposes have been upheld in *Re Foveaux* [1895] 2 Ch. 501, and *Re Slatter* (1905), 49 SOL. J. 314, and for the reduction of the National Debt in *Ashton* v. *Langdale* (1851), 4 De G. & S. 402, and *Nightingale* v. *Goulburn* (1848), 2 Ph. 594. There is in existence an immense machinery for conciliation in labour and similar troubles, but the fact that strikes unhappily continue shows that there is still room for improvement, which, maybe, a bequest such as that of the late Mr. MITTEN would tend to bring about.

Duty to Live with Consumptive Wife.

A CASE reported from Marylebone in *The Times* of 17th October raises an interesting point on the duties of spouses. A wife applied for a maintenance order on the ground of desertion. She had only been married six months, and, being consumptive, had been to hospital. When she left and tried to return to her husband's house, his sister and mother refused her admission. The solicitor who represented the husband stated that the latter's doctor had advised him that it would be dangerous to his health to live with his wife. Eventually an order for maintenance was made. This order could only have been founded on desertion, and meant that the husband's defence was rejected. The law as laid down therefore, is that, notwithstanding danger of infection, a husband must live with a consumptive wife, and, no doubt it would follow that a wife must live with a consumptive husband. The decision may perhaps be compared with the somewhat remarkable case of *Butler* v. *Butler* [1917] P. 244. There the wife, three days after her marriage, was found to have a primary venereal sore on her lip, the inference being that she had contracted the disease in an innocent manner. Unfortunately, innocence did not lessen the danger of contagion, and the husband was infected. He then refused to live with his wife. The local justices on these facts dismissed her summons for maintenance, but HORRIDGE and HILL, JJ., remitted the case with the recital: "This court being of opinion that the reason stated by the justices was not a good cause for refusing to cohabit." They expressly refrained from any dicta on a case where the disease had been guiltily contracted. It may be observed that, so far as infection was concerned, the harm had been done in *Butler* v. *Butler*, whereas at Marylebone the danger was still a factor. On the principles stated in *Moss* v. *Moss* [1897] P. 263 (where an order for nullity was denied to a man whose wife had concealed her pregnancy by another man when she married him), it may perhaps be deduced that no result of ante-nuptial incontinence, however unfortunate, should be allowed to interrupt the *connubium*, and that, therefore, the sequel would have been the same if the disease had been guiltily contracted. It is clear, of course, that in the case of venereal disease neither husband nor wife is called upon to risk contagion, but possibly such risk would be held negligible if the parties merely lived under the same roof. No doubt either party would be justified in making a temporary break in the *connubium* while the other was suffering from diphtheria, small-pox, scarlet fever, etc. The question of leprosy does not appear to have arisen in our courts, but concealment of leprosy on marriage would certainly appear to be no ground for a decree of nullity.

Plain Language.

A CORONER recently found it necessary to advise a medical witness to give evidence in plain English so that a jury of laymen might be expected to understand it. The injunction is not so often required now as formerly. Certain distinguished scientists have set a fine example of simple diction to explain abstruse facts, and where occasionally they feel bound to use an unusual Latin or Greek technical term they instantly explain its English equivalent. Those who preside over courts would do well to insist on clear exposition. No magistrate or clerk need be ashamed to ask the meaning or the spelling of an unusual technical word, and certainly wherever there is an unlettered prisoner it is a duty to see that he understands, as well as hears, what goes on. We have no grievance against psychology, which is taking an increasingly useful share in the administration of justice; but we suggest that the psychologist, and the psycho-analyst in particular, should guard against the temptation to use his own pet phraseology which, if not misunderstood, often provokes irritation or derision. There is no subject under the sun which cannot be explained in language intelligible to ordinary people by those who have really mastered it themselves, and to refuse to use such language looks rather like an affectation.

Criminal Law and Police Court Practice.

Taking Finger-prints.—A protest was made recently by a solicitor at Birmingham against his client's finger-prints having been taken while he was yet unconvicted: a proceeding which the solicitor stigmatised as absolutely illegal. If, as the police asserted, the man consented, there seems to be no illegality, nor indeed does there seem anything very objectionable about it. Official regulations, of course, provide that when a prisoner's photograph, finger-prints or measurements have been taken and he is subsequently discharged or acquitted, then, if he has never been convicted before, all the particulars so taken are destroyed. The use of force without the necessary authority, or even undue pressure, would be improper. The taking of finger-prints by consent really seems harmless enough. The magistrates, it seems, made no comment upon the matter and remanded the defendant on bail.

Ocular Demonstration.—The *Lancashire Daily Post* reports an ingenious invention by a Blackpool solicitor for assisting courts in appreciating the circumstances surrounding road accidents. The solicitor produced a metal plate constructed in a frame and had a number of small metal plates of different sizes to represent large vehicles, motor cars, motor cycles and lamp-posts. When a sketch of a stretch of road is drawn on the plate the smaller pieces of metal, which are magnetised, attach themselves and can be held up to the view of the court. The idea sounds excellent. Only too often the production of a plan, on which witnesses attempt to mark the positions of vehicles and other objects, leads to confusion. A witness is asked to make a cross, does so, decides it is in the wrong place, marks another, and eventually gets muddled as to which really was the one he meant. The use of models has always proved more helpful. Most people can do much better with movable pieces than with dots and crosses, and if, as here, the little models can be made to stay in position when required by the simple process of magnetisation, it ought to be easy for the court and everyone concerned to get a clear picture of the place and the vehicles about which the case is proceeding. We should like to see an extended use made of the model system.

Flogging and Nerves.—The senior medical officer of Brixton Prison reported to the Recorder at the Central Criminal Court last week, that a young man who had pleaded guilty of robbery could not, in his opinion, safely be whipped. He was too introspective, and had been reading intellectual quackery which was not good for his neurotic temperament. A good many people will be inclined to sneer about it. We do not share their view. A few people seem indifferent to corporal punishment; many dread it, and to the neurotic the anticipation, the experience and the remembrance would be ghastly torture. Whatever may be thought of punishing small boys by whipping, there can hardly be any dispute that corporal punishment of grown men is a rather desperate expedient. Whether it reforms or deters is at least doubtful. It seems likely to brutalise some who suffer it. The claim that it deters others is speculative. It may appear to do so, but the effect may be only temporary. Montesquieu wrote that robbery on the highway, which in his time had become common in France, was for a time stopped by the punishment of breaking upon the wheel, but it soon became as common as ever. What we are seeking for nowadays is punishment, or other measure, which shall be reformative and deterrent with a lasting effect. Flogging does not recommend itself on this basis.

Mr. Charles Edward Soames, solicitor, of East Garston, Berks, and Coleman-street, E.C., who died on 7th July, aged sixty-nine, left £53,395, with net personalty £45,895. He left £500 to Arthur Edward Williams, managing clerk, and £100 to Alfred Wood, clerk.

The Estate Agent as Agricultural Arbitrator.

The estate agent is frequently called upon to assist in agricultural arbitrations, sometimes as official arbitrator nominated by the Minister of Agriculture and Fisheries, or as arbitrator chosen by the parties concerned for the settlement of their difficulties, and at other times as an expert witness called by one side or the other to give evidence. Agricultural arbitrations are not conducted under the Arbitration Act, 1896 (that being specifically excluded), but in accordance with the provisions of the Agricultural Holdings Act, 1923, and the rules made thereunder, which are to be found in the second schedule to that statute. The scope of the duties of an arbitrator under this Act has been the subject of review by the High Court, and it will be well, at the outset, to enquire what are the matters upon which he is entitled to make an award, and what are *ultra vires*. Section 16 of the Act, which deals with the matters that are to be referred to arbitration, reads as follows:—

> "Any question or difference arising out of any claim by the tenant of a holding against the landlord for compensation payable under this Act or for any sums claimed to be due to the tenant from the landlord for any breach of contract or otherwise in respect of the holding, or out of any claim by the landlord against the tenant for waste wrongly committed or permitted by the tenant or for any breach of contract or otherwise in respect of the holding, and any other question or difference of any kind whatsoever between the landlord and the tenant of the holding arising out of the termination of the tenancy of the holding or arising, whether during the tenancy or on the termination thereof, as to the construction of the contract of tenancy, and any other question which under this Act is referred to arbitration, shall be determined, notwithstanding any agreement under the contract of tenancy or otherwise providing for a different method of arbitration, by a single arbitrator in accordance with the provisions set out in the second schedule to this Act."

Now the various compensations payable under the Act which a tenant may claim are these:—

(*a*) Compensation for improvements;

(*b*) Compensation for damage by game;

(*c*) Compensation for disturbance.

These, however, are not the only matters in respect of which an arbitrator may be called upon to act. Thus, an arbitrator may be called upon to determine a dispute between landlord and tenant under s. 49, as to whether a holding or part of a holding is to be treated as a market garden; or to decide between landlord and tenant under s. 12, as to the rent to be paid for the holding as from the next ensuing date at which the tenancy could have been determined by notice; and upon "any other question or difference of any kind whatsoever between the landlord and the tenant of the holding arising out of the termination of the tenancy or . . . as to the construction of the contract of tenancy . . ." What precisely is meant by this comprehensive language and what are the limits of an arbitrator's jurisdiction are matters upon which there have been differences of opinion not wholly dispelled by the judicial decisions. It is, however, clearly established that, although the wording of s. 16 excludes any other form of arbitration, it does not take away the common law remedies of the parties against each other for breaches of agreement and similar matters of dispute. In *Lowther* v. *Clifford* [1927] 1 K.B. 130, it was decided that arbitration is *not* compulsory in matters which are outside the scope of the Act. Whether the parties can have an "outside" matter dealt with by consent of the arbitrator under the Act has not been finally settled; but the words "arising out of the tenancy or . . . as to the construction of the contract of tenancy . . ." appear to

provide a limit to what must of necessity be arbitrated upon under the provisions of the statute.

Arbitration and Valuation.

A distinction must be recognised between arbitration and mere valuation. Many non-legal arbitrators have failed to recognise this distinction with results unfortunate to the parties (and, upon occasion, to themselves if they only knew it!). An arbitrator is a person charged with duties that are essentially *judicial*. A valuer is a person whose business it is to appraise the monetary worth of something material. Much of the confusion that surrounds the use of the words "arbitration" and "valuation" is due to the mixing-up of the duties of arbitrators and valuers under s. 1 of the Act of 1923. That section provides for the determination of what is commonly known as tenant-right—the assessment of unexhausted manurial values and other matters collectively termed "improvements" and specified in the first schedule to the Act. In the great majority of cases the practice followed in this matter is for the outgoing tenant's valuer to meet the incomer's valuer and settle the amount to be paid to the outgoer—the incomer being bound by his agreement with the landlord to pay over the amount. This is a convenient method—though the landlord is primarily responsible to the outgoer in the event of there being no new tenant at the time the vacancy arises or of any default on the part of the incomer. What the statute provides is (*vide* s. 16) that, in the event of disagreement (which in practice means disagreement between the respective valuers) the amount is to be settled by a single *arbitrator* who is to decide judicially between the valuers who will then become mere witnesses.

Further confusion of thought has arisen out of the use of the term "umpire." Sometimes in anticipation of a difference arising the parties will nominate valuers with an "umpire." An umpire may be merely a third valuer with authority to override the other two; or he may be an arbitrator. The legal distinction was very clearly laid down in the case of *Re Carus-Wilson and Greene* (1886),18 Q.B.D. 7—which related to the valuation of timber upon the sale of an estate—when Lord Esher, M.R., said:—

> "The question here is, whether the umpire was merely a valuer substituted for the valuers originally appointed by the parties in a certain event or an arbitrator. If it appears from the terms of the agreement by which a matter is submitted to a person's decision, that the intention of the parties was that he should hold an enquiry in the nature of a judicial enquiry, and hear the respective cases of the parties, and decide upon evidence laid before him, then the case is one of an arbitration. The intention in such cases is that there shall be a judicial inquiry worked out in a judicial manner. On the other hand, there are cases in which a person is appointed to ascertain some matter for the purpose of preventing differences from arising, not of settling them when they have arisen, and where the case is not one of arbitration but of a mere valuation. There may be cases of an intermediate kind, where though a person is appointed to settle disputes that have arisen, still it is not intended that he shall be bound to hear evidence or arguments. In such cases it may often be difficult to say whether he is intended to be an arbitrator or to exercise some function other than that of arbitrator. Such cases must be determined each according to its particular circumstances."

So it is important when a layman (that is to say a person who is not a lawyer by profession) is appointed to act as "arbitrator," that he should clearly understand at the outset what his position is to be.

The Conduct of the Arbitration.

An arbitration under the Agricultural Holdings Act, 1923, must be conducted in accordance with the rules set out in the second schedule to the Act which are reasonably clear and comprehensive. The references in those rules to an arbitrator "misconducting" himself must be understood in a wider sense than at first sight would appear. Mistake in the manner of conducting proceedings is *legal* misconduct and will suffice, upon occasion shown, to invalidate any award that may have been made. That is quite distinct from "misconduct" in the narrower sense of personal misbehaviour, e.g., obvious partiality or actual fraudulent collusion in respect of which an arbitrator can be removed by motion in the County Court.

The arbitrator then should be careful to follow as closely as possible the rules of evidence in hearing the case. He will usually employ a solicitor to advise him on legal questions arising. Often these questions are of a very difficult nature; in that event the arbitrator has a discretion to refer any such question for direction to the judge of the local County Court. It may be—and often is—desirable to adopt this course, but where possible the hearing of the evidence should be completed and the award should be made subject to such direction, as it is important to avoid adjournments which naturally add considerably to the cost of the proceedings.

"Stating a Case."

It frequently happens that one of the parties to an arbitration will request the arbitrator to "state a case" for the opinion of the court upon some point of law arising during the proceedings. The "Court" is the County Court of the district. In the event of the arbitrator refusing to do so the party concerned may apply to the Court for an order directing him to state the case. Sometimes one or both of the parties will ask the arbitrator to state his award "in the form of a special case," which brings about the same result as the making of an award, subject to the decision of the Court upon a point or points of law which have arisen. The procedure is governed by Order XL of the County Court (Agricultural Holdings) Rules, 1909, the effect of which is continued by s. 58 of the Act of 1923. It is hardly necessary to add that when a case has been stated, the direction of the Court must be strictly followed. Failure to apply the opinion or direction of the Court has been held by the Scottish Courts to amount to "misconduct" (*Mitchell-Gill* v. *Buchan* [1921] S.C. 390).

Technicalities to be Observed.

The arbitrator, being a judicial personage, must take note of all technical requirements, and if he finds that one party or the other has failed to observe the requirements of the law which are laid down, e.g., as regards notices, particulars or conditions precedent he must not hesitate to give effect to the finding. For instance, if it transpires in the course of evidence that the tenant has failed to give to the landlord (or *vice versa*) particulars of a claim within two months of the expiration of the tenancy (see s. 16, sub-s. (2)), then, that claim being no longer enforceable, the arbitrator should strike it out and/or decline to entertain it. If he fails to give effect to the law in such a matter, his award will be liable to be set aside. And in matters of this kind the arbitrator himself is entitled to take cognisance of the irregularity without waiting for one of the parties to raise it by way of objection.

It is with regard to the various technicalities that are frequently met with in these matters that the lay arbitrator will find his principal troubles arise. Many of these incidents are anticipated and provided for in the Act. Thus, s. 18 provides for the determination of claims where a holding has become vested in more than one person in several parts: here the tenant is entitled to require the arbitrator to determine the amount he is entitled to as compensation as though the holding had not been divided, and then to apportion the amount awarded between the several persons who for purposes of the Act together constitute the "landlord" of the holding. Probably more arbitrations arise out of claims for disturbance than out of all other claims put together. Section 12 of the Act is so lengthy and complicated, and contains so many provisoes that this is not surprising; nor is it surprising that

lay arbitrators often find it perplexing and difficult to come to a satisfactory conclusion upon cases that arise under the section. As an illustration of the sort of hidden legal pitfall that an arbitrator may quite unwittingly fall into, there is the provision of sub-s. (1) (*e*), which deprives the tenant of his right to compensation for disturbance if he has refused, or failed within a reasonable time to agree to, a demand made to him *in writing* by the landlord for the future rent to be arbitrated upon. Now the case of *Westlake* v. *Page* [1926] 1 K.B. 298, decided that not only must the demand by the landlord be made in writing, but that it cannot be contained in the same document as the notice to quit. Consequently a landlord who gives his tenant notice to arbitrate, and in the same letter gives him notice to quit, becomes liable to pay compensation (or put in the other way, deprives his main objection to the claim for disturbance of its virtue). That is only one illustration of the topsy-turvy happenings under this long and complex section; and the moral of it is that an agricultural arbitrator must not only understand the practical technique of farming—because a mere valuer may be presumed to know that—but he must also be generally familiar with the provisions of the statute law and must at least know what sections have been under the consideration of the courts and what interpretations have been put upon them. Only in this way can the lay arbitrator hope to be able to give an award that will survive criticism.

Building Societies and Housing.

(By RANDOLPH A. GLEN, M.A., LL.B.)

That the building societies of this country have done work of inestimable value in meeting the housing shortage, and countering the pernicious activities of the Communist agitator, cannot be denied, and it is interesting to note the origin and spread of these organisations.

The essentials of life are water, food, fire, and a "home" or "habitation." The distinction between the two words in inverted commas reveals the germ of the building society movement. The attraction of a home lies in the freedom of ownership, as against the thraldom of a tenanted habitation. Towards the end of the eighteenth century, with the advent of the industrial age, recognition of this distinction took concrete shape. Men left the land for the towns, agriculture for the factory and mines. They began to realise that to pay rent was an economic mistake. Nearly the same amount of money applied in the gradual purchase of a house would, they perceived, produce more comfort and at the same time build up capital for old age or a rainy day. To those with fixity of employment, the prospect of really owning their houses was alluring. The idea of home ownership having taken root, the next thing was to devise some means of bringing it to fruition.

The original method adopted was the formation of a "club," the subscriptions to which were first used for acquiring land and afterwards, as funds increased, for building houses. Lots were drawn, and the lucky member got the first house. The fortunate ones paid no rent, but continued their subscriptions until each member had a house, when the club was wound up and each member had conveyed to him the freehold of his house. The clubs became societies. The subscriptions became shares. Abuses sprang up, particularly with regard to balloting, and rules to prevent them were framed. These received statutory form in the Friendly Societies Act of 1829. In 1836 the Act of that year limited the value of such shares to £150 each, and the monthly contributions to 20s. per share, the houses to be mortgaged to the society until shares, interest, fines and other liabilities had been fully paid. Then came "Terminating" societies. These did not build or purchase houses, but advanced money on mortgage, thus providing its members with the finance for building or purchasing houses at their discretion anywhere, so long as the security was sufficient.

These clubs and societies were the ancestors of the present permanent building societies, the first of which was, so far as the records tell, founded in Chelmsford in 1845. These not only provide finance for house hunters, but afford a safe and remunerative depository for the savings of the thrifty who already possess houses. To-day it is not necessary to await the slow accumulation of members' subscriptions, and there is no need to draw lots or ballot for houses or loans. The societies have enough money to satisfy all comers on demand.

In 1869 was formed a Building Societies Protection Association, which is now called the National Association of Building Societies. The association set up a commission of inquiry in 1872, and the Act of 1874 which resulted has been called the Magna Charta of Building Societies. It enabled such societies to be registered and incorporated, and most of those then existing speedily took advantage of the Act, and business progressed rapidly. The Liberator failure in 1892 brought ruin to many, and checked the movement. But the salutary result was the Act of 1894, with its stringent provisions as to audit and examination of assets. The Birkbeck failure in 1911 caused another check, and disclosed a defect in the Act of 1894 which has not yet been remedied. The Act should have required all such societies to be incorporated, and thus made subject to the Act.

For some years before the war there had been a growing shortage of housing accommodation, and a disinclination on the part of investors to put capital into house property. Building costs had been increasing, and the return for investments in houses had been diminishing. The Budget of 1909, with its avowed policy of transferring to the Exchequer a large part of any profit derived from dealings in house property, enforced a form of taxation applicable to no other kind of capital. There were also the increasing demands from sanitary authorities for renovation and reconstruction of older houses which were not in accordance with modern requirements and the improved knowledge of sanitation. The speculative builder became less active. All these causes operated to hinder the flow of capital into new buildings, and rendered house property unfashionable as an investment.

Then followed the war, with its enormous dislocation of all energies, the building of houses came to a standstill, the men engaged in the building trade were diverted to other work or were in the army. Large migrations of population took place to industrial centres where munition workers were required, and the shortage of houses began to be felt acutely. Prices and rents rose rapidly, and, in order to stop profiteering and in the interest of the majority, the Government was forced to attempt to interfere with the ordinary laws of supply and demand and to introduce legislation restricting the increase of rents and mortgage interest. This was a temporary expedient, but is still with us. It aggravated the shortage of houses by deflecting capital into the other channels for investment which were so abundant.

Following the war there came a further redistribution of population, and the return and demobilisation of a vast army, with the result that one of the most serious post-war problems to be faced was the shortage of houses, due to five years' suspension of building, added to a decline which had already been in existence. It is estimated that the normal requirements of the country for replacements, and to meet the wants of increasing population, are 100,000 houses per year, and it has recently been stated that 200,000 are now being built each year, while 1,000,000 have been provided already.

The first thing that emerged after the war was that it was not possible to build houses at anything like an economic rental. The small house of six rooms, letting at 6s. 6d. or 7s. 6d. per week inclusive of rates and costing twenty-five years ago from £230 to £250, could not be built under three times that figure, and, with the increased value of money, could not be let at less than 20s. to 25s. per week exclusive of rates. With

larger houses a similar increase took place, and the general result was that houses to be let vanished from the market. Almost every person who had a house which became vacant or decontrolled offered it for sale, at a price considerably in excess of the pre-war price, and such house quickly changed hands over and over again, each time at an enhanced figure.

Similarly, all the new houses that were being built were offered for sale, and so the necessity for purchase arose, as it was absolutely impossible in most places to find one which could be rented. People who had never before given any thought to the possibility of buying a house, or to the advantages of doing so, were driven by sheer necessity to make the effort, and so the building society idea became known to a totally different class, and a fresh stratum of society was gradually made aware of the service which the movement had to offer in the matter of house purchase by instalments.

The next stage came when the Government stepped in and began to offer subsidies towards the cost of building, and the cost of houses promptly rose again. Fortunately, the building societies were ready. The principal demand was for houses from £600 to about £1,500, and this was just the class of property in which building societies had been specialising for years past. The purchase of houses by means of a self-liquidating mortgage, which had been a voluntary system before the war, adopted by those who preferred to buy rather than to rent, had become almost compulsory for everyone who required a house, and the field of building society operations was enormously increased.

In 1921 a slackening of demand occurred. The first mad rush for houses was stayed, funds accumulated by individuals during the palmy days of the munition maker had been spent, and purchasers of houses were becoming more wary and more critical. This was the dearest period of building prices, which had become so excessive as to check the demand slightly, and a readjustment of the position began to show itself. Since then there has been a steady growth of business, and the societies are now making advances at the rate mentioned below. They have been able to place the whole of their organisation and accumulated funds at the service of the nation, and have grappled with the problem with wonderful success.

The building society mission is not to urge the accumulation of money for money's sake, but for ultimate independence, the ability to spend the autumn of life in moderate comfort, free from the soul-destroying dependence upon the charity of others or State funds, and in the forefront is the special application of savings towards the acquisition of a home of one's own. It ranges from the exercise of thrift in its most minute form, such as a farthing in a home bank to the putting by of large sums to be used by the society in the provision of houses for those who need them.

In the past new capital has been derived very largely from the unexpended income of the wealthy, but with heavy death and estate duties, income tax and super-tax, and all the devices of the revenue for extracting money from a person, whether alive or dead, the nation can no longer rely upon them. The burden must fall upon the lower and middle classes more and more as inherited wealth disappears. The building societies provide the machinery whereby these classes can and do put up capital in ever-increasing amounts. According to the report of the Registrar of Friendly Societies just published, which deals with the year 1928, of the 1,035 building societies only 38 are unincorporated. They together held £13,846,879 reserve funds, or nearly two millions more than in 1927, and more than double the reserves held in 1923. The total assets in 1928 were £268,464,781, again more than double those in 1923. From 1919 to 1928 their shareholders enabled them to advance on mortgage £372,442,456, the amount for 1928 alone being £58,664,684. In that year about 500,000 houses were in process of being purchased through the societies, which, if all goes well, will soon be their own, in addition to considerably more than 2,000,000 building society shareholders who are at the present moment living in houses which they have purchased through the societies.

See SIR ENOCH HILL'S *speeches* on p. 194 and p. 230. B.S. Year Book 1929.

Moreover, pride of ownership teaches cleanliness and the proper use of a house and its appurtenances. The occupying owner's pocket tells him that it is not good to keep coal in the bath, or to smash up the banisters for firewood. The difference between the houses of owner occupiers and tenant occupiers is shown by the well-kept appearance of the one and the dowdiness of the other. The owner-occupier's position affords a pleasant contrast to the Communist's idea of herding mankind in the drab monotony of State-owned barracks.

I cordially agree with the following passage in Mr. LEONARD G. HODGSON'S recent book on "Building Societies," from which much of the above information has been derived: "Whether it is regarded from the point of view of the practical assistance which it affords in the matter of housing, or from the financial aspect of encouraging thrift and providing new capital, or as a moral and character building organisation, the building society movement must be accepted as one of the most important social factors of our time and a great stabilising influence in a period of change and reconstruction."

The Reading Inquest and after.

FOLLOWING the inquest on Mr. OLIVER, a Reading newsvendor who was brutally murdered a few months ago, there has been a general demand in the Press for a reform of the law relating to such proceedings. As it continued, the public made the deduction that it was virtually a trial of Mr. PHILIP DREW, an actor, who, in the course of it, and because of the fact that he was not formally charged, was deprived of certain safeguards which English justice demands in favour of accused persons. Local opinion grew that he was not being fairly treated, a deplorable result in any trial. Whether, however, that result points to the need of a change in the law, and, if so, what form that change should take, are not such easy problems as some newspapers appear to consider them. Public sympathy may be well founded, but the case of young HAROLD BROWNE stands as a monument that it may also be extremely misdirected. It will be remembered that the boy, cheered by the crowd on his acquittal of the murder of a little girl, presently went and murdered another. There is also a notion that inquests are increasingly unfair, no doubt founded on those over PACE, the Gloucestershire farmer, Mr. OLIVER, and also the recent inquiries on the Croydon arsenic poisoning mysteries. Elderly people, however, can testify that the worst features of all these inquests were combined and intensified in the second one on Mr. BRAVO, a barrister who died, as the jury found, after twenty-three days had been occupied and two reputations utterly ruined in the process, as the result of wilful murder from the administration of tartar emetic by some person or persons unknown. That was in 1876, and those reputations were ruined to no purpose, for no one was ever charged. The report of the direction of the Queen's Bench Division to the coroner to hold a new inquest appears in *R.* v. *Carter*, (1876), 13 Cox C.C. 220. During the course of the inquest, Mrs. BRAVO and Dr. GULLY were forced by the questions put to them to disclose the whole circumstances of their intrigue between the death of the lady's first husband and her second marriage to Mr. BRAVO, and efforts were even made to establish the fact that it began in the lifetime of the first husband; but the parties swore that there had been no communication between them since the second marriage, and their testimony was not shaken. Nor was there any evidence whatever to connect them with the administration of the poison. Both were therefore publicly disgraced to no purpose. On the other hand, Mr. DREW, even though it has been revealed that he has some irregular habits, has certainly gained more than he has lost.

Coroners, naturally disturbed by the unpopularity brought upon them by recent proceedings, are asking that, by rules or statute or otherwise, their functions and procedure may be better regulated or defined to give them more protection against public resentment. Suggestions have been made that witnesses who might incriminate themselves should not be called. This in fact would be going back to the custom of the coroners of Middlesex, as revealed and disapproved in *Wakley* v. *Cooke* (1849), 4 Exch. 511. ALDERSON, B., said (p. 518): "I hope the practice will be discontinued, for it is highly improper, and that persons will be permitted to make any statements they may wish, when they have any material information to communicate. The refusal to accept a person's testimony casts a gross imputation on him. A person who comes before a coroner cannot be considered as being a party accused, and he is not so until after a verdict has been found. Such a practice is monstrous and most harassing—people are not bound to criminate themselves, and should be told so at the time."

As against this argument, perhaps the observation may be made that the refusal to answer a question might prejudice a witness, as yet unaccused of crime, more than his consent. Persons under any kind of suspicion are as a rule legally represented at inquests, and to advise a refusal to answer a question would be a responsibility which few would undertake. Thus, in practice such persons give evidence under a procedure which is neither so regular nor so fair as that of a criminal trial. At Reading, the coroner put questions to DREW which savoured of cross-examination. In the *Bravo Case*, although the coroner is supposed from his office to represent the Crown, a Q.C. and a junior also appeared for it, and Mrs. BRAVO and Dr. GULLY were, in addition, mercilessly cross-examined by the late Sir GEORGE LEWIS, acting for the BRAVO family.

The position of a coroner is thus a difficult one, for, if a trial ensues he is expected to have properly elucidated the evidence, on pain of such severe stricture from a judge as will be found on pp. 254-6 of "Jervis on Coroners," seventh edition, a rebuke delivered to a coroner by WILLS, J., in 1890. He can, therefore, hardly resist the hostile cross-examination of a witness, or, in the absence of hostility, avoid putting testing questions to him, perhaps suggested by the police.

One of the chief difficulties in the way of practical reform therefore appears to be the fact that a witness who is not bound to incriminate himself has in theory proper protection already. A certain coroner has stated his own practice to be not to admit statements which are not strictly evidence, but this practice, while it might exclude some useful information, would not necessarily prevent damaging questions being put to a witness. Possibly a witness, who finds that he is being subjected to a hostile cross-examination, should have some formal right of challenge, either to be accused or otherwise, so that he should definitely know his position; but he can always refuse to answer, and such a limitation would embarrass the course of justice.

A case was noted on p. 82, *ante*, in which a coroner resumed an inquest after magistrates had heard and dismissed a charge of murder, holding that there was no *primâ facie* evidence. The coroner's jury found a verdict of manslaughter, whereupon the person previously accused was committed on the coroner's warrant, to answer the charge a second time. It was a case of shooting, the death being, in the magistrates' opinion, the result of pure accident, but, in that of the coroner's jury, of criminal negligence. The Grand Jury, on the lead of ROCHE, J., threw out the bill. It would be easy to enact that no coroner should have power to commit after the dismissal of a charge by magistrates, and in fact, Mr. R. H. MORRIS, M.P., brought in a Bill for this purpose in Parliament last January. This, however, would be a minor reform, to meet an unusual case. The complaint that a coroner's inquest is a roving investigation may be met by the retort that that is exactly what it is framed by law to be. Some have suggested that it should be abolished altogether, but that would put out of action one of the most powerful of our instruments of justice against murder and foul play. The power of the coroner to order a post-mortem examination, and to marshal evidence of death at the earliest possible moment, should certainly not be relinquished. Given, for example, that someone is poisoned, the post-mortem reveals the fact at once, and the coroner finds out what has happened while memories are fresh. And if the inquest is to be any use for the purposes of justice, it must be thorough. The only possible alternative is the questioning by the police or some official (in the *Bravo Case*, the Treasury Solicitor), as a preliminary to the second inquest, and, after the outcry raised in the case of Miss SAVIDGE, the police very naturally prefer that, if there is to be a press campaign and complaints of "third degree" methods, that the coroner shall take the brunt of it.

To illustrate the difficulties of coroners, a case from Bournemouth may be cited of an inquest on a woman who was killed on a road as the result of a triple collision between two cars and a motor-cycle. In the course of the proceedings solicitors representing the deceased's relatives and the motor-cyclist made resentful protest against the coroner's refusal to allow them to cross-examine witnesses. The coroner therefore stands to be attacked whether he allows too many or too few questions. And it seems obvious that if he finds it necessary to put leading questions to a suspected witness, or allows him to be cross-examined, he must permit that witness's legal advisers to put similar questions to witnesses hostile to their client.

In fact, if an inquest is to have its proper value, every question relevant to find the cause of death should be put to elicit the truth, and a person who, like Mr. DREW, is seen hovering in a somewhat uncertain fashion near the place where a murder has occurred, at about the time of its occurrence, cannot and ought not to be allowed to avoid explaining his movements. Such questions may be put by the police in private, but a witness is perhaps better protected by public examination. One result of the Reading inquest can be brought about by Mr. DREW himself, who can see to it that in future his footsteps shall be less uncertain, and his mind rather clearer.

Factory and Workshops Acts.

FENCING OF MILL GEARING AND DANGEROUS MACHINERY.

IN *Sumner* v. *Swire & Sons*, heard by the Divisional Court, on the 18th July, 1929, HEWART, L.C.J., said that the justices appeared to have fallen into several of the fallacies with which factory cases were apt to abound, and the respondents were ordered to pay the costs of the appeal. It may, therefore, be of some general interest if the position were elucidated.

The Factory and Workshop Act, 1901, s. 10 (1) provides:—With respect to the fencing of machinery in a factory the following provisions shall have effect: (*c*) All dangerous parts of the machinery and every part of the mill gearing must either be securely fenced or be in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced. By sub-s. (2) and s. 135, the penalty for non-compliance is a fine not exceeding £10. By s. 136, if any person is killed or dies or suffers any bodily injury or injury to health in consequence of the neglect to observe this requirement, the penalty is increased to a fine not exceeding £100, provided that in the case of injury to health, the occupier shall not be liable under this section unless the injury was caused by the neglect. The occupier of the factory is the person liable to these penalties, but s. 142 makes the owner or hirer of a machine liable in certain cases, and by s. 87, in the case of tenement factories, the liability is transferred to the owner,

except as regards machinery supplied by the owner. Section 140 renders any agent, servant, workman or other person who has committed the offence also liable to these penalties, and s. 141 enables the occupier charged with the offence upon an information laid by him to have any other person, whom he charges as the actual offender, brought before the court on the day of hearing; and if, after the commission of the offence has been proved, the occupier proves, to the satisfaction of the court, that (*a*) he has used due diligence, and (*b*) that the other person had committed the offence without his knowledge, consent or connivance, the other person shall be convicted, and the occupier exempted. When it is made to appear to the satisfaction of the inspector at the time of discovering an offence that the above state of facts did obtain, the inspector shall proceed against the actual offender without first proceeding against the occupier.

It will be noticed that the machinery referred to in s. 10 must be in a "factory," which, by s. 149, means a textile or a non-textile factory as therein described. Every part of the mill gearing is comprised in para. (*c*), whether dangerous or not. By s. 156, "mill gearing" comprehends every shaft, whether upright, oblique or horizontal, and every wheel, drum or pulley or other appliance by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process. As the word "comprehends" is used, this definition is not exhaustive. The paragraph refers to all dangerous parts of the machinery. By s. 156 "machinery" includes any driving straps or bands.

In *Redgrave* v. *Lloyd* [1895] 1 Q.B. 876; 43 W.R. 527, it was held that the expression "machinery" includes all the operative machinery in a factory, and is not limited to machinery *ejusdem generis* with mill gearing, and the question whether any part of the machinery is dangerous is for the justices to decide, subject to appeal. In *Hindle* v. *Birtwistle*, [1897] 1 Q.B. 192; 45 W.R. 159, it was held that the paragraph applies to all machinery from which, in the ordinary course of working it, danger may be reasonably anticipated, but the more modern case of *Butler* v. *Glacier Metal Co.*, *infra*, have extended its application to all machinery, dangerous in fact, notwithstanding that the danger or method of working it could not be anticipated. The legislature protects careful and careless workmen (*Davies* v. *Owen* [1919] 2 K.B. 39), or as it was put in *Shaxby* v. *Excell & Co. Ltd.* (1924, unreported), the object of the legislature being to protect workmen against the result of their own carelessness or indolence or haste. Employers are not to suppose that workmen will behave with a special degree of prudence: *Wesley Turner* v. *Venables* (1927 unreported).

Davies v. *Owen*, *supra*, was an action against the employers to recover damages for an injury sustained by a workman owing to the dangerous parts of a machine called a calender not being securely fenced. The jury found that the accident was caused by the calender not being securely fenced, that the plaintiff elected to take the risk of working on this calender with full knowledge and appreciation of the risk he ran, and that the calender, if securely fenced, would be of practically no commercial value, and in their opinion, if the machine was fenced, it would be more dangerous than in its present condition. Mr. Justice SATLER, in his judgment, said: "There was no negligence at common law, but, on the issue of breach of statutory duty, the plaintiff succeeds. The obligation imposed by the section is absolute. It is an obligation, not merely to fence, but to fence securely. If a machine cannot be securely fenced while remaining commercially practicable or mechanically useful, the statute, in effect, prohibits its use. The workman is entitled to have secure fencing in fact, and the findings of the jury show that he did not have it. The finding of the jury that secure fencing is commercially and mechanically impracticable is irrelevant, and the plaintiff has proved a breach of the statutory duty and consequent damage. Where a plaintiff can show that the injury he has sustained has been the direct consequence of a breach of an express statutory duty, the maxim *volenti non fit injuria* does not avail."

In *Butler* v. *Glacier Metal Co.* (1924 unreported), the North Metropolitan Electric Supply Co. were renewing the electric light installation in the respondents' factory, and two of the Electric Supply Company's employees were renewing the electric light wiring on the inside of the roof of the respondent's machine shop. The main driving shaft, or "mill gearing," extended into the machine shop at a height of 10 feet from the floor level. On the date in question, this shaft was revolving at a speed of about 180 revolutions per minute. Part of the wiring which was being renewed was being attached to the inside of the ridge of the roof almost directly above the shaft, but about 9 feet from it. The contractors' two workmen placed a pair of steps underneath the shaft, and erected a ladder on the third tread thereof, the top of the ladder resting against the roof, and one workman ascended the ladder in connexion with his work. In descending, he stepped from the ladder on to the steps and his coat was caught by the revolving shaft, and he sustained serious injuries. Counsel for the defence outlined a dismal picture of certain commercial consequences he feared might follow if, upon a large scale, it became necessary to fence mill gearing. The Divisional Court regarded these consequences with "marked composure," and found that the unfenced mill gearing was not in such a position or of such construction as to be equally safe to every person employed or working in the factory, as it would have been if it had been securely fenced. They held that the words "employed or working in the factory" included the contractors' workmen who were so employed or working, although they were not under the control of the respondents, and remitted the case to the justices with a direction to convict.

In *Shaxby* v. *Excell & Co. Ltd.* (1924 unreported), a workman engaged in replacing a belt on a pulley became entangled in a revolving shaft. The stipendary magistrate found that the shaft was not in such a position or of such construction as to be equally safe to persons engaged in mounting belts on the driving pulley of the shaft while it was revolving as it would have been if it had been securely fenced or had the machinery been stopped, and that the belts were frequently mounted while the shaft was revolving, but he dismissed the case because a belt pole was provided for replacing belts on moving pulleys and the injured man had been warned of the danger he incurred. The appeal was allowed, and the case remitted with a direction to convict. On the same day *Shaxby* v. *A. W. Smith & Co.* (1924 unreported) was heard. In this case, a workman had been injured in endeavouring to remove with his hand a strip of metal from a power press used for the cold bending of T shaped strips of sheet metal. Notices had been posted up in the factory directing that tongs should always be used for work on power presses. Tongs had always been provided, and were available, and the injured workman had repeatedly been warned not to use the press without them. The justices expressed the opinion that "the said power press was not in fact dangerous if tongs had been used.' The Divisional Court said that this was, in fact, a finding that the press was dangerous, and since it was not securely fenced the negligence or disregard of instructions by the workman was immaterial, and they remitted the case to the justices with a direction to convict. In *Atkinson* v. *London & North Eastern Railway Co.* (1925), 42 T.L.R. 79, the facts were that, in an engineer's shop there was a tube cutting machine driven by a pulley fixed on a horizontal shaft, the shaft and pulley being elevated about 13 feet from the floor, and not in any way fenced or guarded. The defence was that the shafting was safe because of its position, that the injured workman was acting contrary to regulations in attempting to move the belt from the shaft to the pulley while the engine was running, and that any guard which could have been used for fencing the

shaft or pulley must have been removed before the belt could have been put on the pulley. The justices found that any fence would have been useless owing to the shaft being 13 feet above the ground, and dismissed the information. The case was remitted to the justices with a direction to convict on the grounds that the section contained no dispensation because the mill gearing was 13 feet above the ground, and there was no evidence on which the justices could have found that the shaft was in such position or of such construction as to be equally safe to every person employed or working in the factory as it would have been if it were securely fixed. In 1926 in *Rees* v. *Jones* (unreported), HEWART, L.C.J., pointed out that "it has long been established that the object of the legislation is, amongst other things, and not the least, to protect workmen against the result of their own carelessness or indolence or haste." In *Hunt* v. *Nautilus Steam Shipping Co. Ltd.* (1927 unreported), the information charged a breach of a regulation made under the Act. A coupling on a shaft had been covered with oakum and canvas which revolved with the shafting, and the stipendiary magistrate in the case stated, that "being of opinion that the cause of the accident was some part of the machinery other than the cover to the coupling having first caught the clothing of Gardiner (the injured man), and that this brought him against the portion of the shaft, about which he was then wound; and being unable from the evidence to decide what part of the machinery it was that so caused the accident, and being further of opinion that in covering the coupling, as described above, the respondents had securely fenced the shaft as required by the regulations, I dismissed the information." The Divisional Court, however, took the view that there was no evidence upon which the learned magistrate could find that the shaft had been securely fenced, and that it was quite immaterial to decide what part of the machinery first caught the injured man's clothing. The case was accordingly remitted with a direction to convict.

Thomas v. *Thomas Bolton & Sons Ltd.* (1927), 44 T.L.R. 640, appears to be a hard case upon employers. Nine guards had been provided for effectually and securely fencing certain mill gearing, consisting of a coupling gear in a certain rolling mill. The respondents had exhibited in the works printed notices of rules prohibiting their workmen from removing any guard from machinery without special instructions, and they employed a manager over the department to see that the machinery was kept duly fenced. Contrary to their duty of replacing all the guards before starting the rollers, the four workmen set the coupling gear in motion without replacing the ninth guard. When the rolling gearing had been in motion for about one hour, owing to their neglect in not replacing the ninth guard, one of the workmen, who slipped and fell, was dragged into the coupling gear, receiving injuries from which he died. The justices found that the respondents, having provided the necessary guards, had taken all steps that could reasonably be expected of them to see that the mill gearing was properly fenced, and in view of the admission of the workmen that it was their fault that it was not fenced, they dismissed the information. An ingenious attempt was made by the respondents' counsel to draw a distinction between the words "neglected to observe" used in s. 136 which involved, as he contended, of necessity some act of negligence on the part of the respondents, and the words "failing to observe" and "not observing" used in other sections, but the court held that, in the case of a duty, the expressions meant the same thing. The court further held, that if the occupiers wished to avail themselves of the protection by establishing to the satisfaction of the justices that they were not responsible for the breach of duty, but somebody else was the real offender, they must avail themselves of the procedure indicated by s. 141, and lay an information against those offenders. The court also pointed out, that if the inspector had to proceed against the actual offenders, he was the person to be satisfied at the time of discovering the offence that the conditions prescribed by s. 141 (2) were complied with, and not the justices. The case was accordingly remitted to the justices with a direction to convict. *Menzies* v. *Prewett's Executors* (1928 unreported) is the next case. A workman had his hand crushed in a dough mixing machine. The machine was set in a recess of a bakery, and a narrow space only was left to enable a person to pass to the front of the trough, and the distance between the front of the trough and the machine was such as to render it unlikely that anyone would reach across the trough so far as to get his hand into the machine. The machine had been fitted with a wooden cover and a warning notice posted, but the justices were shown a safety cover which could have been fitted to the machine, and which could only be removed by stopping the machinery. The justices found: "that the machine had been in use since 1908, that the respondents or their testator had made or fitted a movable wooden lid so as to prevent the person operating the machine, when mixing dough, from putting his hand into it; that a printed notice was hung on the machine in full view of the operator containing a warning against using the machine without the lid and a threat of dismissal if this warning was disregarded; that no accident had previously happened through the use of the machine, and that the injured man had no business in front of the machine at the time of the accident, but should have been at the end of it working the operating gear." Upon these findings, the justices were of the opinion "that the machine *when* tilted forward to eject the dough was in such a position as to be equally safe to every person employed or working in the factory as it would have been if it were securely fenced." The Divisional Court held, that there was no evidence upon which they could come to this conclusion, having regard to the fact that they had stated that the machine would have been *less* dangerous with a safety cover. The next case, *Threlkeld* v. *Buckley and Co.* (*Greenfield*) *Limited*, is reported in this volume at p. 210. The Divisional Court held, that there was no evidence to justify the justices' finding that the shafting was safe, on the contrary, if it had been securely fenced the accident would not have happened, and on that ground alone (the other point not arising that the deceased was not employed or working in the factory as he had been merely visiting the premises in pursuance of a contract with the respondents) the case was remitted to the justices with directions to convict.

In *Sumner* v. *Swire & Sons Ltd.* (*The Times*, 19th July, 1929), a slater, who had gone on the roof of a department of the respondents, was caught in some unfenced overhead shafting and was killed. The justices found that the man could have reached the scene of his work by getting on the roofs of adjoining departments, and that the shafting was equally safe as it would have been if it had been fenced, and they dismissed the information. HEWART, L.C.J., said that the justices appeared to have fallen into several of the fallacies with which factory cases were apt to abound. They seemed to have thought that it was an answer to the summons that the man had some other way of getting where he had to work. They had found that the shafting was safe for a great number of people who did not go near it. On the evidence it was impossible to find that the shafting was as safe for persons employed in the factory as it would have been if it had been properly fenced. The case must go back to the justices with a direction to convict. As the company had taken a very bad point which had frequently been before the court and which they ought to have known could not be successful, they must pay the costs, although they had not appeared to resist the appeal. In *Menzies* v. *Wheeler* (*The Times*, 19th July, 1929), a laundry proprietor was alleged to have neglected to fence an overhead shaft in the washhouse, in consequence of which a worker who was fixing bolts in the washhouse ceiling was killed. Counsel for the appellant said that the justices had found that "it is usual for overhead shafting of this kind not to be fenced." That was a shocking finding, and was untrue. The justices had also fallen into the fallacy that factory inspectors were to be

the forum to decide whether the Act had been complied with, and had relied on the fact that inspectors had never complained of the shaft being unfenced. HEWART, L.C.J., said that the justices had imported words into the Act, and had dealt with the case as if the shafting ought only to be fenced where fencing was required for safety during the ordinary course of work in the factory. There was no evidence on which they could properly find that the shafting was as safe as it would have been if it had been securely fenced, and the case must be remitted to the justices with a direction to convict.

To sum up, the paragraph requires that all mill gearing and all dangerous parts of the machinery must be either securely fenced or to be in such a position or of such construction as to be equally safe to every person employed or working in the factory as it would have been if it had been securely fenced. The obligation is absolute (*Davies* v. *Owen*). Parts of machinery are dangerous from which in the course of working it danger may be met with (*Hindley* v. *Birtwistle*), even if the course of working employed could not reasonably be anticipated (*Butler* v. *Glacier Metal Co.*), the legislation protecting both careful and careless workmen (*Davies* v. *Owen*), whether of the occupiers or of their contractors (*Butler's Case*) against the result of their own carelessness, indolence or haste (*Davies* v. *Owen*; *Shaxby* v. *Excell & Co. Ltd*). Employers are not to suppose that workmen will behave with a special degree of prudence (*Wesley Turner* v. *Venables*). If an accident has happened, the machinery cannot have been securely fenced (*Threlkeld* v. *Buckley & Co.* (*Greenfield*) *Ltd.*) If secure fencing is required, it is no defence to prove that the machinery when securely fenced would not be commercially practicable or mechanically useful (*Davies* v. *Owen*). The dangerous parts must be securely fenced, even if the machinery has been erected 10 or 13 feet above the floor level (*Atkinson* v. *London & North Eastern Railway Co.*; *Butler* v. *Glacier Metal Co.*) If the other requirement is relied on, that the machinery was in such a position or of such a construction as to be equally safe as if securely fenced, then the defendant must prove not only that it was equally safe to the great majority of the workmen (*Atkinson's Case*), but also to every person employed or working in the factory whether or not under the control of the occupiers (*Butler's Case*). It is no defence to prove that the machinery was safe in the ordinary course of working (*Butler's Case*), or, if another way to the work had been taken (*Sumner* v. *Swire's Case*), or that the machinery had been in use in the same condition for ten years without an accident (*Prewett's Case*), or that the accident was due to the workmen's negligence (*Bolton's Case*) or disobedience of orders (*Excell's, A. W. Smith's and Bolton's Cases*), or neglect to use the tools or guards provided (*Excell's, A. W. Smith's and Bolton's Cases*). The prohibition being absolute, it would be no defence to prove that the factory inspector had often visited the factory and had not complained of the want of fencing (*Wheeler's Case*).

If the defendants "take a very bad point which has frequently been before the court and which they ought to have known cannot be successful, they may be ordered to pay the costs of the appeal to the Divisional Court, although they persuade the justices to dismiss the case, and do not appear to resist the appeal" (*Sumner* v. *Swire*). In cases in which the defendant's solicitor cannot reasonably anticipate a legal decision in his favour, he will be exercising a wise discretion if he eschews all false points, and devotes his energies to a reduction in the penalty to be imposed.

ROYAL VISITORS AT THE CANCER HOSPITAL.

T.R.H. The Prince and Princess of Montenegro visited the Cancer Hospital (Free), Fulham-road, on the 16th inst., and were received by General Marsdin Newton (the Chairman) and the Secretary (Mr. J. Courtney Buchanan). The Royal visitors were afterwards shown over the hospital by the Senior Surgeon, Mr. R. H. Jocelyn Swan, and the Matron, Miss E. A. Harrison, A.R.R.C., and were greatly interested in the Research Institute, the Electrical Department, and in the new Radium Room.

Town Tenants in Northern Ireland.

I.—THE DEPARTMENTAL COMMITTEE.

THE report of the Departmental Committee on "The law of Landlord and Tenant in the case of Non-Agricultural Holdings" was recently presented to the Parliament of Northern Ireland, and is receiving general attention. The report is a scholarly document, as might be expected from the distinguished lawyers of which the committee was composed, under the chairmanship of Mr. R. D. MEGAW, K.C. It is to be regretted that the main report lacks the signatures of two members of the committee. This disagreement, however, is not serious, as the minority admit that they agree without qualification with almost all the positive recommendations of the majority, and with the remaining few subject to qualifications indicated by them. It is expected, therefore, that the chief recommendations will eventually form the basis of legislation.

The report illustrates the process of action and re-action which has taken place between England and Ireland in the matter of legislation upon the relationship between landlord and tenant. The Town Tenants (Ireland) Act of 1906 supplied a basis for Pt. I of the English Landlord and Tenant Act, 1927, the phraseology of the two being in many places identical. Again, the passing of the Act of 1927 as respects England seems to have supplied an impulse for the frequent discussion of town tenants' grievances in the Northern Ireland Parliament, culminating in the appointment by the Minister of Home Affairs of the committee whose report is now under review.

It is important to note that the report deals only with the law in the case of "Non-Agricultural Holdings." The attention of the Imperial Legislature has been bestowed upon the tenant of the "Agricultural Holding" at frequent intervals between the year 1870 and this present year. The rights of compensation for disturbance and compensation for improvements; "the three F's"—fixity of tenure, free sale, and fair rents; State aid for the purchase of holdings by agreement; and, finally, the "automatic sale" of all tenanted land; these have been enacted by the Parliament of the United Kingdom, which undertook the completion of land purchase for Northern Ireland. The town tenants must look to the local Parliament for amendments of law; the way for these has been carefully prepared by the Departmental Committee, who spared no pains in inviting representations, hearing evidence, and considering possible alterations of the existing law.

II.—THE TOWN TENANTS ACT.

The Town Tenants (Ireland) Act, 1906, gives a right of compensation for improvements to the tenant of a house, shop or other building situate in an urban district, town or village, and occupied either for residential or for business purposes, or partly for one and partly for the other. This compensation is not to exceed the capitalised value of the addition to the letting value of the holding due to that tenant's improvements. Unless the landlord and tenant agree, the amount of compensation is to be determined by the County Court. A tenant who is quitting is not entitled to any compensation for improvements where the landlord has made a reasonable offer of a new tenancy or of the continuation or renewal of a tenancy, with the right of the tenant to dispose of his interest therein. Certain improvements are excluded from the benefit of the Act, i.e., improvements which the landlord has undertaken to make; improvements made in contravention of a written contract not to make them; improvements made in pursuance of a contract for valuable consideration; improvements made before the passing of the Act, except permanent buildings, unless made within ten years before the date of the claim. The Act also contains provisions for compensation for unreasonable disturbance, where a landlord, without good and sufficient cause, terminates or refuses to renew a tenancy, or demands an increased rent on account of improvements made by the tenant. These latter provisions

apply only to buildings occupied wholly or to a substantial extent for trade or business purposes, held under tenancies of certain specified classes—(*a*) from year to year; (*b*) leases for less than thirty-one years; (*c*) contracts of tenancy existing at the passing of the Act at rents less than £100 a year. "Contracting out" of the Act is prohibited.

The twenty-two years of the operation of the Act are reviewed by the committee in an interesting paragraph: "The fact is that singularly few claims for compensation under it have been brought into court, and there is a rather surprising ignorance of its provisions . . . At the present day it is a rarity to hear of a claim being the subject of litigation. It must not, however, be inferred from this that the Act has proved a failure or is now a dead letter. Our opinion . . . is that the Act in its application has conferred very real benefits on tenants without putting them to the expense and inconvenience of having to resort to litigation to any appreciable extent, and we think that on the whole it has operated beneficially as between landlords and tenants." This view was also held by solicitor witnesses of wide experience. One of these said: "In my own experience the Act has been used very frequently as a lever for bringing about more reasonable conditions on the renewal of leases." Another stated: "The Town Tenants Act is a good Act . . . If it were not for the fact that the Town Tenants Act has been in existence in Ireland, there would have been a great deal of hardship."

III.—IRISH AND ENGLISH STATUTE LAW.

The committee made a careful comparison between the Irish Act of 1906 and the English Act of 1927. They came to the conclusion that the Irish Act is more liberal as regards providing for compensation in respect of improvements and goodwill; in England no compensation is payable for improvements made before the passing of the Act, but in Ireland, as has been explained, this is provided for; the provisions in the English Act relative to compensation for improvements are limited to premises used for business or professional purposes, whilst the Irish Act includes residential premises in this connexion. At the same time, the committee recommend the adoption of the following provisions of Part I of the English Act:—

(*a*) The principle contained in s. 5, empowering the tribunal to order the grant of a new lease for a term not exceeding fourteen years, in cases where the tenant establishes that the payment of a monetary sum would not compensate him for loss of goodwill and the tribunal consider that the grant of a new lease is in all the circumstances reasonable.

(*b*) The principle of s. 14, which empowers a landlord to sell or grant leases notwithstanding restrictions.

The committee, whilst recommending various detailed amendments of the Irish Act of 1906, consider that the existing tribunal—the County Court—should be retained, with the same right of appeal to superior courts as at present.

IV.—GENERAL AMENDMENTS OF LAW.

The report adopts some of the general amendments of the law of landlord and tenant which are contained in Pt. II of the Landlord and Tenant Act, 1927, namely:—

Section 18 (1), limiting the damages which a landlord may recover for breach of a covenant to repair to the amount by which the value of the reversion in the premises is diminished.

Section 18 (2), which contains additional provisions regarding the service on the lessee of the notice of a breach of a covenant to repair.

Section 19 (1), (2) and (3), which apply the standard of reasonableness to the giving of certain consents by landlords.

A welcome reform would be accomplished, if the committee's recommendation as to the recovery of possession of small premises be adopted by the legislature. At present, courts of Petty Sessions in Northern Ireland have jurisdiction under three distinct codes. The report proposes that these courts should have jurisdiction as respects premises situate in any part of their district held under monthly or shorter tenancies at rents not exceeding £26 per annum; and that the court should consist of a resident magistrate having legal qualifications, with an appeal to the County Court upon a point of law.

V.—LEASEHOLD ENFRANCHISEMENT.

The two signatories of the minority report recommend that occupying leaseholders of dwellinghouses to which the Town Tenants Act (amended so as to include building tenants) applies, should have a right to an order by the Court for the sale of their landlords' interest to them subject to specified conditions. The minority also put forward a proposal that occupying leaseholders of business premises should have a right to apply to the Court for enfranchisement of their leaseholds, and that the Court should be empowered either to grant this application on such terms as it may think right, or to refuse, having regard to the same considerations as in the case of occupying leaseholders of dwellings. As to these proposals the majority report states: "We do not differ in the importance to be attached to the acquisition of ownership by occupying tenants, and approve of facilities being granted for this based on economic considerations, but we do not regard this as within the scope of our inquiry." Neither in England nor in Northern Ireland, evidently, is leasehold enfranchisement regarded as spelling revolution. The Leaseholders (Compulsory Arbitration) Bill of the present year was introduced into the House of Commons at Westminster by Conservative members. The Bill contained an exception for "special cases, such as economic disintegration of an estate with complications in the interests holding the estate"—an exception which the arbitrator under the Bill might have found difficult to apply. The question is beset with difficulties, but may well be brought up again in some other form. An early proposal—made by a Select Committee of the House of Commons in 1889—was that in areas where the majority of the occupiers are leaseholders, desirous of purchasing their freeholds, the local authority should have power to acquire by agreement or compulsorily the reversionary interests in the property within the area in question, and to sell the reversions of their houses to such of the occupying tenants as had agreed to enfranchise. Public assistance, by way of advances for the acquisition of "small dwellings" by agreement, has, of course, been possible since the passing of the Statute of 1899, and this facility has been extended in recent years as respects both Great Britain and Northern Ireland.

Sex Differentiation in Law.

The strong outcry for equality of the sexes before the law, which has resulted in the last few years in the extension of the franchise to women, and the passing of the Sex Disqualification Removal Act, 1919, has by no means died down, and it is still alleged that men and women are not equal before the law. It may be worth while, therefore, to consider such differentiation between the sexes as still exists in law, and the justification, if any, for its existence.

At the outset it may be laid down that no body of law conceived, enacted and administered by sane persons can entirely dispense with this differentiation. In any criminal law in a civilized country the offences dealt with in ss. 48 to 55 of the Offences Against the Person Act, 1861, must be punished, and they are offences which, from their nature, none but male persons can commit, at least as principals. In a fairly recent Bill a section was inserted, at the suggestion of certain feminists, to make the seduction of a youth by a woman older than himself an offence, and thus give some colour to the equality principle, but, fortunately for our reputation for humour and common-sense, it was dropped. The spectacle of the

young prosecutor giving evidence that the injury (?) was done to him without his consent would not have been edifying. In fact, the only conceivable sexual crime of a woman or big girl against the opposite sex (apart from the communication of disease, an offence in some countries) would be interference with a small boy not physically strong enough to resist, one which, no doubt, would be well covered by the ordinary laws forbidding cruelty to children.

Again, nature dictates entirely different duties to husband and wife, and no reasonable law can ignore the distinction thus fundamentally made. The wife, in bearing and bringing up children and keeping house, has a whole-time job, and in the normal course the husband must therefore support her and children. Consequently, there is a common law duty on the husband to maintain the wife, which is not balanced by a common law duty on the wife to maintain her husband, though in certain circumstances she has a duty to ratepayers to keep him off the rates. The problem of an ideal law of husband and wife still awaits solution, but certainly not on the lines of a code enjoining duties on the "spouse" without indicating the sex.

Making, therefore, the assumption that sex differentiation in law must necessarily exist, our own system may be examined in detail and its justice considered. As a matter of respect, perhaps, succession to the Crown should take precedence. Our law certainly does give preference to the male sex in the choice of the heir to the throne, although females are not entirely excluded as they are or were in some countries. It might be argued from the examples of QUEEN VICTORIA and QUEEN ELIZABETH that we should not do so badly if we reversed our practice, though the first QUEEN MARY would certainly have to be thrown in the opposite scale. In our present happy circumstances, the only suggestion that will here be made is that it is well to let well alone.

In respect of peerages, the same male preference applies, though there are a handful of peeresses in their own right. These are entitled to trial on indictment of felony by their peers, but not to writs of summons to the House of Lords (see *Viscountess Rhondda's Claim* [1922] 2 A.C. 339). The latter right was nearly conceded, but, on the interposition of Lord BIRKENHEAD, denied, and the House of Lords retains the quality, whether a defect or otherwise, that, the Sex Disqualification Act notwithstanding, it is strictly masculine. So, it is interesting to note, is the Canadian Senate, as decided by the Privy Council only last week.

Women sit in the House of Commons, but as yet form an insignificant minority (numerically) of its members. Perhaps the House of Lords will one day be abolished, and an elected House of Ladies be substituted, with a few nominated men, to balance the House of Commons. Such an experiment might be as successful as another, and would produce a real instead of a nominal equality of the sexes in Parliament.

The Sex Disqualification (Removal) Act, 1919, has resulted in the calling and admission of lady barristers and solicitors, though, so far, to no major promotion or honour in either profession. No lady barrister, however, has as yet qualified on time to be King's Counsel—and a barrister who "takes silk" at double the minimum time has not done badly. Ladies have long since been qualified to become practising physicians and surgeons. There are complaints, however, that they still do not receive fair treatment as students in the hospital medical schools. Hospitals are usually self-governing bodies, and to force rigid sex equality on them may not be easy, though it might be possible to withhold grants of public money from those failing to treat lady students fairly. No similar complaint has been made in respect of feminine legal students.

Women are not deemed eligible as priests or deacons of the established church, though if the priesthood is a "civil profession or vocation" within s. 1 of the 1919 Act, they should be. If some woman fought the question in the courts, with the result of a mandamus directed to, or injunction served on a bishop, requiring him to ordain her, the result would probably be disestablishment, to obtain the freedom in the matter of Unitarians, who ordain women, and Roman Catholics, whose refusal to ordain women is even stronger than the Anglican.

The University of Oxford grants degrees to women, that of Cambridge withholds them. Again, the only possible way of persuading Cambridge University in the matter would appear to be the withholding of public money. The older colleges remain steadfastly masculine, and co-education in the American sense has not been adopted.

The administration of the Civil Service is stated in certain quarters as in violation of the 1919 Act. Women are so well organised in defence of their rights, however—possibly now even better than men—that they should be in a position to prevent anything illegal. Married women who are teachers and post office servants, of course require special leave for bearing children, of length and frequency which a male employé could not expect to be conceded to him.

The 1919 Act, which has so greatly enlarged the privileges of women, has imposed the burden of jury service as a reasonable offset, since it is borne by men. Section 1 of the Act, however, provided that rules might be made exempting from attendance as jurors any women who for medical reasons are unfit to attend, and Ord. 36, r. 9 A (3), accordingly exempts "on account of pregnancy or other feminine condition or ailment." Thus again the theoretical equality necessitates indulgence.

Sex differentiation appears in the law as to solicitation for immoral purposes. Section 28 of the Town Police Clauses Act, 1847, is aimed against "every common prostitute, loitering and importuning," etc., and s. 3 of the Vagrancy Act, 1824, imposes penalties on those who behave in a riotous or indecent manner. Section 1 (1) (*b*) imposes heavier penalties on male persons who solicit, but has not hitherto been held to cover the case of a man annoying a woman. This can be dealt with under the ordinary powers of the police to preserve order and prevent conduct conducive to a breach of the peace (see the Metropolitan Police Act, 1839, s. 54 (13)), and, indeed, an appeal to any passer-by will usually result in the speedy disappearance of the offender. The law as to soliciting has on several recent occasions been considered in these pages and for further criticism the reader may be referred to Vol. 71, p. 795. It may be noted that there is special punishment for a man, but not another woman, living on a prostitute's earnings.

In respect of property, it may be noted that the Administration of Estates Act, 1925, swept away in one night all sex differentiation in the distribution of an estate on intestacy, with a saving only for the interests of the heirs of lunatics, which might practically be deemed vested. Married women have still the privilege of "restraint from anticipation" of their settled incomes, it having been expressly held that a man's income cannot be settled on him in this way.

The Factory Acts prescribe shorter hours for women, and the Seats for Shop Assistants Act, 1899 (repealed and re-enacted by s. 3 of the Shops Act, 1912), relates to females only. In some quarters, it may be added, the special protection given to women by the Acts is resented, as tending to prevent their fair competition with men in certain employments. No one can doubt that the earlier Factory Acts, passed before women workers were properly organised, rescued them from cruel overwork and oppression. Possibly they do not now require the same protection.

The law of affiliation is another recognition of the fact that nature's sex differentiation cannot be ignored on the statute book. And the remedy for breach of promise of marriage, in theory open to either sex, is in practice confined to feminine plaintiffs only. It may also be observed that a wife's vote in respect of her husband's business premises is not balanced by a similar concession to husbands.

Pensions for widows may be mentioned as another discrimination. Indeed, it is hardly too much to say that women, keeping their ancient privileges while acquiring those of man and new ones of their own, have also contrived to shed their ancient disabilities, especially those attaching to coverture. The question whether a fair balance between the sexes has been preserved in this process is one of public interest, and which Parliament may have one day to consider.

The Accountant as Income Tax Adviser.

THE administration of the Income Tax Acts during recent years has called and still calls more and more for the expert work of the trained accountant. The statute law on the subject was consolidated by the Income Tax Act, 1918, when the over-grown and unintelligible mass of legislation of the previous seventy years was reduced to the proportions of that measure; but since changes have been made in practically every annual Finance Act, often of a complicated and perplexing character, there is constant and ever-increasing demand for the accountant's services with consequent need on his part to keep closely in touch with the subject. What we know as the "Income Tax Acts" to-day is the Act of 1918, plus all that has been added or varied by the Finance Acts passed annually since that year. But reliance on the wording of the principal Act and acquaintance with the changes which have been wrought year by year will avail little without a close acquaintance with the decisions of the courts to be found in the official Revenue Case Reports. The clients who require accountants' help and guidance in the preparation of their annual returns will probably be wholly unacquainted with these legal decisions; the accountant will therefore need to be well-informed as to all important up-to-date case law. Moreover—and this is of equal importance—he will be wise to try and thoroughly understand the *legal principles* underlying these decisions, since without an intelligent appreciation of those principles he will not be able to form any general conclusion upon any set of circumstances that may arise upon which there is no actual decision to be found. The decisions of the courts are usually based upon precedent, and thus definite principles become established. That is why it is important to understand and appreciate legal principles, for only by so doing is it possible to form anything approaching an accurate conclusion as to the probable view that will be taken by the court upon any new or complicated set of circumstances such as are continually arising in income tax cases.

Not that the accountant should in any way attempt to usurp the functions of the *legal* adviser. That is quite a mistaken view of his duties. The accountant is essentially a man of figures: the lawyer a man of precedents, legal principles and nice distinctions. The object of the accountant in trying to understand and follow out the principles underlying the decisions of the courts should be to enable him more effectively to arrange and dissect the facts and figures upon which legal guidance may have to be sought, and possibly the direction of the court be obtained. In an important income tax appeal there are three wholly distinct functions to be discharged by three different professional men, each of them trained to the work of his particular sphere. The accountant is the man to dissect and present the figures, certifying their accuracy and ready to explain if need should arise the effect of different impositions or deductions. Then it is the turn of the solicitor to prepare the evidence and attend to the formalities of court procedure that have to be observed; and finally it is the province of counsel, skilled in dialectics and trained to detect the finest legal distinctions, to argue the case in the interests of the lay client (who, after all, is the person most concerned in the ultimate issue). So let us appreciate and uphold the true professional distinction, in the interest of the lay client.

But the number of cases in which there is any likelihood of legal proceedings eventuating is infinitesimal in comparison with those in which professional assistance is not needed beyond what the accountant can and may properly give. The complexity of modern income tax practice is such that only the smallest private traders as a rule now attempt to prepare their own returns. Many of those who continue to do so would probably save money by employing a professional accountant to do it for them. Limited companies and partnerships now invariably find it necessary to employ an accountant. It is in the duty of preparing returns for small private traders and little trading companies that the accountant will find a general acquaintance with the principles of law as laid down in the decided cases of the greatest value. It would be unreasonable to expect the small trader to have to go and seek legal advice over a matter of saving two or three pounds, and the accountant should be able to handle small matters like this quite easily. It has, in fact, become the practice for accountants to interview the surveyors of taxes, and thousands of cases are adjusted expeditiously and economically in this way—so that no possible exception can be taken, and the legal profession is ready and willing to acknowledge the practice and to co-operate so far as is possible with accountants so engaged. There are, however, limits to what an accountant should undertake to do in the way of appearing before assessment committees; and wise men will not imperil the good relations between two great professions by unwise encroachments of that sort.

The complexities of income tax practice have (for the time being at all events) been multiplied by the abolition of the three-year average system of assessing taxable income. Probably, in the end, the new system will work out more equitably to the taxpayer and will simplify the whole matter in a very large number of cases. The Finance Act, 1926, by which the new basis of assessment has been changed, may be expected to produce (in fact has already produced) a number of new problems to be solved. The preparation of claims for repayment is one of the most important duties the accountant is likely to be called upon to perform; and the complications that arise upon changes of ownership of a business, and assessment of statutory profits for purposes of apportionment arising thereout, afford scope for the exercise of no small degree of professional skill, although the Rules of Cases afford considerable help.

To the lawyer, however, the cases arising under the several Law of Property Statutes relating, for instance, to the duties of executors and trustees, are of chief interest and importance, and the accountant will often be called in to prepare special reports. When, for instance, a taxpayer dies, the first thing to be done will be to apportion the income of the estate between the periods prior to and subsequent to the date of death. The income for the prior period will be the basis of the statutory income of the deceased for that year; that of the subsequent period will concern the beneficiaries—but inasmuch as executors are liable personally for three years in respect of any tax found to be due for any year or years for which the deceased might have been assessed had he survived, an investigation will be necessary and provision will have to be made to meet any such demand before the estate can be distributed. This is merely one illustration of the practical problems that have to be met by trustees and executors, and the guidance of an experienced accountant may often be of very real value in anticipating this and similar pitfalls to be avoided.

Again, there is very wide scope for the assistance of the professional accountant in the cases—arising with unhappy frequency during the last few years—where the authorities take steps to recover "back duty," and often follow it up by a criminal prosecution. Here the position of the accountant will be one of very great responsibility—sometimes of no inconsiderable delicacy and difficulty. If he should, unfortunately, have been the auditor and financial adviser of the

person accused of fraudulent practices his own position may be very difficult, unless he is able to show that the deception charged was not one to which he could possibly have been privy. On the other hand, his duty to his client will necessarily prompt him to make every effort to put a non-criminal complexion upon what has happened. These possibilities only serve to show how important it is that an accountant should be strict in all his business relations, and should never on any account allow himself to be privy to anything dishonourable or capable of misinterpretation; not only so, but he should regard it as a duty to keep his client straight in such matters. Heavy taxation, especially since the war, and the difficulty of carrying on businesses requiring large capital support, have tended to make business men prone to avoid all possible taxation. On the other hand it cannot be said that the doings of officialdom have been quite as scrupulous and helpful in many cases as they ought to have been. The accountant, in preparing and passing balance-sheets and income tax returns will, therefore, be entitled to do everything that may *legitimately* be done to assist his client in making the smallest possible taxable return for assessment. On the other hand he should be scrupulously careful to avoid anything in the way of non-disclosure, though it is perfectly legitimate to take advantage of every proper opportunity for securing allowances and deductions. And here it is that the professional accountant will find the best opportunities for showing his talent and securing the approbation of his clients.

Mr. W. H. Foster, LL.M.

We have pleasure in presenting with this issue of The Solicitors' Journal a portrait—which it is a privilege to include in our gallery of legal celebrities—of Mr. Walter Henry Foster, solicitor, the President of The Law Society for the year 1929-30.

The son of Mr. Thomas Barham Foster, M.I.C.E., of Manchester, he was educated at Haileybury and Trinity College, Cambridge, where he graduated LL.M., and was articled in 1884 to Mr. George Burrow Gregory, of the firm of Messrs. Gregory, Rowcliffe, Rowcliffe, Rawle & Johnstone (now Messrs. Gregory, Rowcliffe & Co.), of 1, Bedford-row, W.C. He was admitted in 1887 and has been a member of the eminent firm of Messrs. Milles, Jennings, White & Foster, formerly of 8, Whitehall-place, S.W., but now of 5, Little College-street, Westminster, S.W., for thirty-five years.

Mr. Foster, who has been Solicitor to the Ecclesiastical Commissioners for England for so many years, has been an active member of the Council of The Law Society since 1910, and is a member of the Discipline Committee, the Finance Committee, the Land Transfer Committee, the Parliamentary Committee, the Scale and Costs Committee, and the Solicitors' Remuneration Committee, upon all of which he has rendered invaluable services.

During the war he served on the Military Service Committee of The Law Society, and was also a member of the Grants Committee, set up to consider applications for assistance from the families of solicitors on active service, and was Chairman of the legal section.

At the Annual Meeting of The Law Society held at Bournemouth recently, his able and comprehensive Presidential address covered a wide field and attracted considerable attention. His references to the "abnormal output of legislation during recent years" and to the grave injustice caused by the operation of s. 46 of the Housing Act, 1925, whereby property, however sanitary in itself, is to be treated as insanitary if situate in an "insanitary area" and the basis of compensation to the owner confined to the site value only of the land, received well-merited applause.

His principal recreations are golfing and motoring.

W. P. H.

Company Law and Practice.

The Companies Act, 1929, is to come into force on the 1st November, and many are the practical questions arising thereout which are of immediate importance to every practising lawyer and to a vast number of his clients. For instance, the articles of association of a company, whether it has adopted Table A or not, will require consideration.

In many cases it will no doubt be thought advisable to have these amended, so as to be in line with the new law, but whether this be done or not, company lawyers and secretaries should note in what ways their articles are affected by the recent legislation, so that their conduct may be regulated accordingly.

Existing articles will probably be silent (as was Table A of 1908) as to giving notice of a refusal to register a transfer of shares or debentures, but after the commencement of the Companies Act, 1929, such a notice must be given to the transferee. It should therefore be borne in mind by those concerned with the registering of transfers that s. 66 provides that if a company refuses to register a transfer of any shares or debentures, the company must, within two months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal. This is one of the imposing array of fifty-seven cases in which a new penalty is imposed by this legislation; the company and every officer thereof who is knowingly a party to a default in sending the required notice is made liable to a fine, not exceeding £5 per day, for every day during which the default continues.

* * * * *

The new provisions with regard to special resolutions will render the vast majority of existing articles of association positively misleading to those who consult them for guidance with regard to meetings of the company. Briefly, a special resolution is in future to be a resolution passed by a three-fourths' majority of members voting at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been given, though, if all members entitled to attend and vote at any such meeting agree, less than twenty-one days' notice may be given (s. 117 (2)).

Consequently the article dealing with notices of meetings, which frequently provides for at least seven days' notice (as does Article 49 of Table A of 1908) must always hereafter be read as being subject, in the case of meetings intended to deal with special resolutions, to the necessity of giving not less than twenty-one days' notice of such meetings, unless all the members entitled to attend and vote at any such meeting otherwise agree.

The common form article dealing with confirmatory meetings will also, from the 1st November, have outlived its period of usefulness.

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The articles dealing with accounts require to be treated with caution, as the new legislation contains many provisions which directly affect the question. Sections 122 to 130 of the Companies Act, 1929, should be carefully studied, as they deal in considerable detail with accounts and balance sheets in connexion with companies. In a later issue it is hoped to deal with these sections, but for the moment only the broad outline, in so far as it affects the articles, can be sketched out. Section 122 (1) provides that every company must keep proper books of account with respect to:—

(*a*) All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

Table A of 1908, and most articles of association, contained provisions which covered (*a*) and (*c*), though (*b*) was not usually provided for. Now, however, it is essential that (*b*) be complied with.

Annual profit and loss accounts and balance sheets must be laid before the company in general meeting; this is generally provided for, but it is now incumbent on those concerned to see that these profit and loss accounts and balance sheets contain such matters and have attached to them such reports, as are now required. The new Table A, by Article 100, rather burkes the issue by providing that s. 123 of the Act shall be complied with, but anyone who imagines that he only need know s. 123 in order to be able to comply with the Act as regards accounts and balance sheets must be at once undeceived, for ss. 45, 46, 47, 75 and 124 to 129 inclusive, are all material.

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In the case of companies other than private companies, a copy of every balance sheet, including the requisite annexes and a copy of the auditors' report, must, not less than seven days before a general meeting at which such documents are to be laid before the company, be sent to all persons entitled to receive notices of general meetings. The maximum penalty for being in default, which can be imposed on the company and every officer in default, is £20 (s. 130 (1)). In private companies, members may request the company to furnish them with copies of the above documents, and the company must, on such request, and on tender of the proper charge, furnish copies within seven days, at a maximum charge of sixpence per hundred words, or expose itself, and every officer in default, to the liability of a fine of £5 for every day during which the default continues (ss. 130 (2) and 365). There is, however, no liability on a private company to furnish these documents to its members otherwise than on request.

(*To be continued.*)

Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925.

Neglect to Maintain a Wife or Infant Children.

FORMERLY, before a married woman could obtain from justices a maintenance order against her husband on the ground of neglect to maintain, she had to prove not only the wilful neglect to provide reasonable maintenance for her or her infant children whom he was legally liable to maintain, but also that he had by such neglect caused her to leave and live separately and apart from him. This latter requirement was repealed by the Summary Jurisdiction (Separation and Maintenance) Act, 1925. There appears to be some vagueness and confusion as to the present position of the wife. The neglect proved must be "wilful." In other words, the wife must prove that the husband has had means or has been able to obtain employment and earn wages, even if he has refused to avail himself of his opportunities. What is reasonable maintenance for the wife or her infant children is a question of fact in each case, after taking into account the means of both the husband and the wife.

The six months' limit on proceedings imposed by s. 11 of the Summary Jurisdiction Act, 1848, and incorporated in these Acts by s. 8 of the 1895 Act, applies if the husband's neglect ceased more than six months before she made her "complaint" to a justice. This matrimonial offence of neglect may be committed and be proved while the wife is living with her husband. This contention is founded on two facts, (*a*) the repeal of the words "and shall by such neglect have caused her to leave and live separately and apart from him." and (*b*) the special provision in s. 1 (4) of the Act of 1925, that no order shall be enforceable whilst the wife "resides" with her husband, and any such order shall cease to have effect if she continues to so reside for a period of three months. Therefore if a wife ceases to reside with her husband within three months of the date of the order, she can enforce her order from the cesser of such residence. Under s. 7 of the Act of 1895, upon proof of "voluntary" resumption of cohabitation, the order shall "upon proof thereof" be discharged. Under s. 2 (3) of the Act of 1925, where the wife "resumes cohabitation" with her husband after living apart from him, the order ceases to have effect. No case has been decided showing the exact meaning of the expressions "voluntary resumption of cohabitation," "resides with her husband" and "resumes cohabitation." It is submitted that "resides with her husband" denotes something less than cohabitation. The words "upon proof thereof" means that a formal order of discharge must be obtained. The fact that the husband has not deserted his wife is immaterial, except possibly from the evidential value of the fact.

The case becomes more difficult if there has been a separation agreement. Although the words in the Act of 1895 are "shall have deserted her," the Divorce Divisional Court have laid down that desertion within six months of complaint is not within these statutes, unless it is still in existence when the case is heard. If the spouses are living apart and the husband is not willing to support his wife and her infant children in his home, and fails to provide reasonable maintenance, the offence is proved. Again, if the spouses are living apart under a separation agreement whereby the husband undertook to pay his wife such sums of money as would be reasonable maintenance, and fails to keep up his payments, the offence would also be proved, unless the agreement contained words precluding the wife from taking proceedings for neglect to maintain, when the case would be open to argument.

There have been two cases which require consideration. In *Diggins* v. *Diggins* [1927] P. 88, there was a deed of separation whereby the husband agreed to pay a weekly sum for his wife's maintenance, and the deed provided that (1) if the wife molested her husband, or (2) took proceedings for restitution or otherwise for compelling him to live with her, he should be free to discontinue his payments. The court held, that the husband had neglected to provide for his wife, and that this deed did not exclude the jurisdiction of the justices. There are some *obiter dicta* by Lord MERRIVALE in this case, that it must not be supposed that the wife had an unlimited right, whenever she had entered into a deed on her own volition, to apply to the justices to get the terms of the deed reviewed. If any case arose where a wife who has entered into a deed proceeds in disregard of it to seek from justices something different, she will meet with an answer which will prevent the possibility of further question. If she does not meet with it in the first instance, she may meet it here. In *Fletcher* v. *Fletcher* (1928) 92 J.P. 94, there was a tacit agreement to separate, and for the husband to pay £20 down and later on 12s. 6d. weekly, and the weekly sums were not paid. The Divisional Court held, that at the time when he separated from his wife, the husband did not intend to maintain her, and that he did not in fact maintain her, they ordered him to pay 12s. 6d. a week, and intimated that if subsequently the wife ceased to be able to earn money, she could apply again.

Since then Lord SHAW of Dunfermline in *Hyman* v. *Hyman*, 45 T.L.R. 444, when dealing with a claim for maintenance or alimony under s. 190 of the Supreme Court of Judicature (Consolidation) Act, 1925, by a wife who had obtained a decree absolute for dissolution of marriage against her husband, expressed his opinion that it was not competent to limit or restrict a power which is given unambiguously and definitely to a court by statute, and that the court was not precluded from discharging its duty by the existence of the provisions of a voluntary deed of separation between the parties. To sum up, a separation deed or agreement is no defence to an application for a maintenance order on the ground of neglect to maintain, unless the wife has expressly agreed not to apply for an order on this ground. Even if it does contain a provision, the effect of such a provision is, at the least, open to argument.

Mr. William Briggs Gill, O.B.E., solicitor, of Leadenhall-street, E.C., left estate of the gross value of £5,041.

Optional Extradition.

A VERY interesting point was raised and argued in a recent extradition case at the Bow-street Police Court, upon Article 2 of the Anglo-Portuguese Extradition Treaty of 17th October, 1893. No decision was given because, ultimately, the accused was allowed voluntarily to surrender himself to the jurisdiction of the Portuguese courts; but the point is one of very considerable importance which may arise again at any time, either upon this treaty or some other treaty similarly worded, and is, therefore, worthy of some note.

The article in question, after reciting a list of "crimes or offences for which the extradition *is* to be granted," continues "Extradition *may* also be granted, at the discretion of the State applied to, in respect of any other crime for which, according to the laws of both the contracting parties for the time being in force, the grant can be made."

The offence alleged was obtaining money by false pretences, an offence which is one of the listed crimes, but the facts, although sufficient to constitute the crime listed as the nearest Portuguese equivalent of this English offence, did not constitute the English offence itself. The evidence did, however, disclose a *primâ facie* case of fraudulent conversion of moneys within s. 20 (1) (iv) (*b*) of the Larceny Act, 1916.

Section 8 of the Extradition Act, 1873, and the Schedule to that Act, adds to the list of extradition crimes "any indictable offence under the Larceny Act, 1861, or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act," so that the English offence revealed by the evidence is an extradition crime.

There was much contention upon the facts and the effect of the facts, and what we have said so far by no means represents a consensus of opinion of counsel on both sides; we merely take it as a basis of discussion of the most interesting point in the case: how effect is to be given to the discretionary clause in the treaty, premising that there is no decided case discoverable upon the question.

For the prosecution it was contended that if they succeeded in making out a case under the section of the Larceny Act cited above, it was the duty of the magistrate to commit for extradition, and that the discretion conferred by the treaty was vested in the executive, after committal. Further, it was contended that a committal by a magistrate is a condition precedent to any exercise of power by the Secretary of State, the whole of the extradition machinery being now comprised in the Extradition Acts.

For the defence it was urged that the whole of the discretion conferred by the treaty was vested in the magistrate, or alternatively, that the "optional" clause referred to a sort of discretion reposed in the Secretary of State, in any case to order extradition, without the intervention, possibly, of a magistrate at all, or without taking evidence.

Upon the first of these suggestions it seems sufficient to say that, on general principles, the discretion vested in a judicial officer must be a judicial discretion, that is to arrive at findings of fact and to apply law to those findings. It would require the most express words to confer any executive discretion upon a judge of any kind, and there is absolutely nothing in the Extradition Acts to indicate any such grant.

Upon the second contention it seems certain at the present day, whatever may have been the legal or constitutional position in the past, that the whole of the executive power to remove aliens from England is conferred by, and limited by the terms of, the statute law. Under the Extradition Acts the executive may send for trial in their own country extraditable persons; under the Aliens Act the Secretary of State may deport certain categories of undesirable aliens. If any general power of extradition existed it would obviously apply to all offences, and the terms of the paragraph of the Portuguese treaty under discussion would be by way of limitation of the suggested power, which could hardly have been intended.

As negativing the existence of any such power, PIGGOTT, "Extradition," p. 32, very pertinently observes: "In so far as the surrender of fugitive criminals by this country is concerned, the fact that it cannot be accomplished without an arrest, that is, without depriving the fugitive of his liberty, necessitates the authority of Parliament. If it were possible for the Sovereign to issue an effective order to a person to leave the Kingdom the question might be different. But the power of expulsion, or of forbidding entry, even supposing it to be within the prerogative of the Sovereign, cannot be enforced without an interference with personal liberty, even though it require no more than the laying of a policeman's hand on the shoulder. Therefore the arrest which is essential to making the Sovereign's agreement to surrender effective requires statutory authority."

The truth of this paragraph has been best confirmed by the subsequent enactment of the Aliens Restriction Acts and regulations. It is true the Secretary of State may, under that special law, make a deportation order if he "deems it to be conducive to the public good to make a deportation order against the alien," but this power is never considered to be, or exercised as, a power to extradite for a criminal offence committed in a foreign country. If it were so intended, or used, the whole of the extradition machinery is cumbrous and superfluous; any alien could be extradited for any offence, however trivial, and whether an offence against English law or not.

The provision of the Aliens Order in question, now Art. 7 (6) (*c*) of the Order of 1920, has been held to be *intra vires*, *R.* v. *Home Secretary, ex parte Venicoff* [1920] 3 K.B. 72, and there is no obligation of law upon the Secretary of State to act judicially. "The matter is one entirely for the Home Secretary as an executive officer."

But the Secretary of State has to act constitutionally even where not restrained by positive law, and is answerable to Parliament if he does not. To act in disregard of the safeguarding provisions of the Extradition Acts would, it is submitted, be unconstitutional, and be exceedingly likely to bring Parliamentary censure upon the executive officer who so acted, and upon any government which supported him in so acting.

A question related to that of a general power to extradite is that of a general duty to extradite. The existence and exercise of the one would at least be likely to lead to the growing up of the other.

There is a valuable discussion in PIGGOTT's "Extradition" upon the question of the duty to extradite, resulting in the conclusion that, in spite of *dicta* of judges in days gone by that such a duty existed, no such duty does in fact exist.

PIGGOTT cites *United States* v. *Rauscher* (1886) 12 Davis (U.S.) 407; 119 U.S. Rep. 407; Scott's "Cases on International Law," p. 274, as expressly negativing this duty, and basing the decision that a person surrendered can be tried only for the offence for which he has been surrendered, upon the absence of this duty; and the judgment itself bears out this view of the case. The judgment runs:

"Prior to these" (modern extradition) "treaties, and apart from them, it may be stated as the general result of the writers upon international law, that there was no well-defined obligation on one country to deliver up such fugitive to another, and though such delivery has often been made, it was upon the principle of comity, and within the discretion of the government whose action was invoked: and it has never been recognised as among those obligations of one government towards another which rest upon established principles of international law."

The decision in *United States* v. *Rauscher* was approved in *Re Woodall* (1888), 57 L.J. M.C. 72. Lord COLERIDGE, C.J., was "entirely satisfied" with the validity of the reasons for the judgment therein.

The Practice as to Costs of Marriage Settlements.

By C. G. O. BRIDGEMAN, Barrister-at-law.

In an Opinion of the Council of The Law Society, dated 3rd March, 1927, and reported in the Society's "Gazette" of July, 1928, the Council expressed their view that Opinion No. 1012 in the 1923 edition of "Law Practice and Usage" represents the present practice in the profession and must be regarded as superseding the other Opinions if and so far as they conflict.

In that Opinion (No. 1012), which I believe first appeared in the annual report of The Law Society for the year 1903 (47 Sol. J. 674), the Council recognised that an arrangement between the parties to pay the costs out of the settled fund or that they should each bear their own costs was a reasonable and proper one, and often a desirable one to make, but nevertheless *having regard to the decided cases* (as to which see below) they were of opinion that, if no arrangement is made between the parties to the contrary, certain rules of practice should prevail, which in substance were (r. 1) that marriage settlements, whether of the husband's or wife's property, including assurances to the trustees of the settlement, should be prepared by the wife's solicitor, and paid for by the husband, (r. 2) that r. 1 did not apply to appointments and other assurances for vesting the property in the settlor previous to its being brought into settlement, and (r. 3) that r. 1 did not apply to a settlement containing a limitation in strict settlement of landed estates. Of these rules, r. 1 was in fact a re-affirmation of earlier Opinions, and r. 2 a revision of Opinions Nos. 1027, 1060 and 1067. In a note to this Opinion, which appeared in exactly the same words in the 1909 edition (edited by the late Mr. W. E. Hollams) it is pointed out that the practice that the costs of a marriage settlement, whether of the husband's or the wife's property, should be paid by the husband was founded on the old law that a husband was liable for the debts of his wife contracted before marriage, and references are given to the authorities on the subject; it is then pointed out that now by virtue of s. 14 of the Married Women's Property Act, 1882, a husband is liable for the debts of his wife contracted before marriage only to the extent of her property to which he has become entitled, and that, except to the extent of such last-mentioned property and apart from any question of express or implied retainer, a husband would not appear now to be under any legal obligation to pay the wife's solicitor's costs in relation to the settlement, *though no doubt the general usage was correctly stated above* (i.e., in No. 1012); and further that the usage was recognised by Kekewich, J., in *Re Lawrence*, [1894] 1 Ch., at p. 558. This note suggests in unmistakable terms that the prevailing usage was not in this respect in accordance with the legal liability.

What then is the meaning of the re-affirmation by the Council in 1927 of the practice laid down by them as correct in 1903? Was it merely intended to make it clear that the earlier Opinions as regards appointments, etc. (such as Nos. 1027, 1060 and 1067). are superseded by No. 1012? Or was it intended to go further and to re-affirm as correct all the rules of practice there laid down? If the former, it is obviously right. If the latter, a further question arises, viz., whether it means that notwithstanding the alteration of the law effected by the M.W.P. Acts, the Council approve of the continuation, in the absence of agreement, of the old usage which disregards such alteration, or whether they adhere to their previous opinion as to the effect of the decided cases notwithstanding the adverse opinion expressed by the successive editors of their digest? Either of these views seems open to serious objections. As regards the first alternative, it has been declared by the courts, in authoritative cases before the old Exchequer Chamber and the Court of Appeal, that to give effect to an usage which involves a defiance or disregard of the law would be obviously contrary to a fundamental principle, and that such usage would not prevail against positive law, whether by statute or decision, and further, that if such a practice exists the sooner it is altered the better. (See *Goodwin* v. *Roberts*, (1875) L.R. 10 Ex. 327, p. 357; *Neilson* v. *James*, (1882) 9 Q.B.D. 546, pp. 551, 552, 554; *Perry* v. *Barnett*, (1885) 15 Q.B.D. 388, pp. 393, 395, 397; *Dashwood* v. *Magniac*, [1891] 3 Ch. 306, pp. 370-1). An Englishman is presumed to contract with knowledge of the law, but not of a practice which disregards the law; and what layman, who has not been married before and learnt by painful experience, would be likely to suspect the existence of such a practice, and contract on that basis? It would, indeed, be an anomaly if the usage of a profession which is emphatically concerned with the practice of the law should be the one and only usage to prevail in defiance of the law, and that such usage should receive the approval of the Council of The Law Society who are justly regarded as guardians of the law. As regards the second alternative—the effect of the decided cases and the M.W.P. Acts—I should have thought that there could be no real doubt. First, on principle and without regard to the decided cases. Section 12 of the Act of 1870 abolished the common law liability of the husband for his wife's ante-nuptial debts, ss. 1-5 of the Act of 1874 restored it, but only to a certain limited extent; and this position is continued, though on somewhat different terms, by s. 14 of the Act of 1882, which, after enacting that a husband married after the coming into operation of the Act, shall be liable for his wife's debts contracted and contracts entered into before marriage to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, proceeds "but he shall not be liable for the same any further or otherwise"—words which surely must include any liability based upon usage, which really involves an implied contract. And this is the view taken by the late Mr. Vaizey in his work on "Settlements" (1887), pp. 1637-8, and by the editors of "Prideaux's Precedents in Conveyancing" (22nd ed., 1926), iii, 164. A different view seems to be taken by the editors of "Key & Elphinstone's Precedents" (12th ed., 1927), ii, 580, where, however, no reasons are given; but it appears to be based upon a passage in the late Sir Howard Elphinstone's "Introduction to Conveyancing," which can be traced back through its various editions to the third edition (1884), p. 392 (and indeed to earlier editions before the Act of 1882). In all these editions, although ss. 13 and 19 of the M.W.P. Act, 1882, are expressly referred to, the crucial section (s. 14) is altogether ignored. There is also a short article in "Current Topics" in The Solicitors' Journal for 16th April, 1887 (31 Sol. J. 389), in which the writer contended: (1) That the obligation of the husband for his wife's costs did not rest on any liability for his wife's ante-nuptial debts, but on the usage which corresponded with the rule between lessor and lessee as to the costs of a lease, and (2) that no alteration was effected by the M.W.P. Act, 1882, because that Act does not "interfere with or affect any settlement" (s. 10 [s. 19?]). But as to (1), this contention ignores the *reason* of the usage, which was explained by Byles, J., in *Helps* v. *Clayton* (see *infra*), and as to (2), in the absence of some provision in the settlement for costs an enactment altering the liability for the costs of its preparation does not interfere with or affect the settlement; and here again the crucial section of the Act of 1882 is ignored. In the "Encyclopædia of Forms, Preliminary Note to Settlements" (1st ed., xiii, 230; 2nd ed., xvi, 100) the rules laid down by the Council in 1903 are quoted at length, but the effect of the M.W.P. Acts is not discussed.

What then are the decided cases, in supposed deference to which the Council in 1903 considered that, in the absence of agreement to the contrary, the old usage should still prevail?

In *Hayward* v. *Fiott* (1837), 8 C. & P. 59, it was ruled at *Nisi Prius* in the Court of King's Bench (by Lord Denman, C.J.), that in the case of an appointment antecedent to a marriage settlement of the lady's property, the question who

was liable for the costs turned upon contract and not upon usage, and that, in the circumstances of that case, the lady's father, who had given the instructions, was liable. So far as it goes, this is an authority in favour of the revised usage laid down by the Council in r. 2 of their opinion of 1903 as against their earlier opinions; but it had nothing to do with the costs of the settlement.

In *Helps* v. *Clayton* (1864), 17 C.B. (N.S.) 553, which came before the Court of Common Pleas (WILLES, BYLES and KEATING, JJ.), before the passing of any of the M.W.P. Acts, the wife, who was an infant residing with her father, and who was held by the court to have given instructions for the marriage settlement through her father acting as her agent, was sued by the solicitors for their costs in connexion with the settlement of the husband's property, the husband being joined as a co-defendant. It was considered by the court that there was a well-established usage in the case of a settlement of personal property for the lady's solicitor to draw the settlement and for the husband to pay for it, and it was held that in the circumstances of that case the lady (and, therefore, after her marriage the husband) was liable for the expenses as a debt contracted by her for "necessaries" before the marriage. The reason of the usage or rule of practice, as explained by BYLES, J. (p. 550), was that the husband becomes liable where the marriage takes effect *because it is his wife's debt*, and there is nothing whatever inconsistent with this in the judgment of the court delivered by WILLES, J. (pp. 565-571): indeed, it seems to be assumed that this was so, for otherwise the question of "necessaries" would not have arisen. It is true that the decision was based on the "usage," which the court apparently considered to extend not only in favour of the wife but also in favour of any person (such as her father or other person *in loco parentis*) who *on the part of the wife* had properly incurred expenses by retaining a solicitor to prepare a settlement in the propriety of which the lady had so large an interest; but in that case the foundation of the usage could only be that the lady would herself have been liable to indemnify the person who had so acted; and the actual decision was that the retainer had been given by the lady's father acting as her agent, and that she was liable directly to the solicitors as principal, such liability being transferred by the fact of marriage to the shoulders of the husband, the person who ultimately ought to bear it. Moreover, the practice as between lessor and lessee in the ordinary case of a lease was referred to, not as the foundation or reason of the practice in the case of a settlement (which, obviously, it could not have been), but merely as furnishing an analogy: in the case of both practices the liability would depend on implied contract. This being so, after the coming into operation of the M.W.P. Acts, the legal maxim *cessante ratione legis cessat ipse lex* would apply, and the practice based upon the law should follow the law.

In *De Stacpoole* v. *De Stacpoole* (1887), 37 Ch. D. 139, the propriety of charging an infant wife's settled property with the costs of the settlement where no other property was available was recognised by NORTH, J., and the decision therefore (so far as it goes) tends rather against the liability of the husband.

In *Re Lawrence*, [1894] 1 Ch. 556, which (like *Helps* v. *Clayton*) was the case of a settlement of the husband's property only, the usage recognised by KEKEWICH, J. (at p. 558) appears to be based on implied retainer of the wife's solicitors by the husband, the original instructions having proceeded from him and been passed on through his own solicitor to the lady's solicitors.

In *Beck* v. *Pierce* (1889), 23 Q.B.D. 316 (a case in the Court of Appeal before Lord ESHER, M.R., LINDLEY and BOWEN, L.JJ., not mentioned in the note to No. 1012), a husband was held liable at the suit of his wife's solicitors for charges incurred by her before the marriage, and the decision was expressly put on the ground that he had acquired from his wife property exceeding in value the amount claimed within the meaning of s. 14 of the M.W.P. Act, 1882. In this case it does not appear from any of the reports whether the sum claimed by the solicitors included the costs of the preparation of the marriage settlement or not, but the circumstances stated rather favour that view, and in any case the *ratio decidendi* applies to a liability based upon usage quite as much as to that based upon any other contract express or implied.

In *Re Gray*, [1901] 1 Ch. 239, p. 244, and in *Reading Industrial Co-operative Society, Ltd.* v. *Palmer*, [1912] 2 Ch. 42, p. 50, the existence of the custom and the fact that it was based on implied contract was recognised by COZENS HARDY, J., and by SWINFEN EADY, J., but no opinion was expressed as to its propriety after the coming into operation of the M.W.P. Acts.

Are there any other material decisions on the practice not referred to in the note? If not, can it really be seriously contended that as regards a person married after 1882 the decided cases are a sufficient justification for the continuance, in the absence of arrangement to the contrary, of the old usage—an usage moreover which is quite out of keeping with modern ideas as to the equality of the sexes? To me it seems almost impossible.

In conclusion, I would ask whether it is not high time that the Council of The Law Society should reconsider the effect of the decided cases, or at any rate that some definite and unambiguous pronouncement should be made declaring that the general usage of the profession does not pretend to override the law, and that if and so far as it is not in accordance with the law it requires modification?

Representation of the Laity in the Councils of the Church.

A STATUTE passed by the Church Assembly, approved by Parliament, and given the Royal Assent at the end of last Session, entitled the "Representation of the Laity Measure, 1929," amends in material particulars the rules contained in the schedule to the original Constitution of the Church Assembly, and places on a greatly improved basis the system of lay representation in the councils of the Church of England.

REPRESENTATIVE BODIES AND THE FRANCHISE.

The representative bodies upon which chosen laity (of both sexes) are entitled to serve are:

(1) Parochial Church Councils;

(2) Ruri-decanal Conferences where such Conferences exist;

(3) Diocesan Conferences; and

(4) the House of Laity;

whilst the general body of lay churchmen are to foregather in "parochial church meetings." The franchise entitling to attend and vote at these parochial meetings is secured by a declaration that the would-be voter is (*a*) baptised and a member of the Church of England and does not belong to any religious body which is not in communion with the Church of England; and (*b*) is resident in the parish, or (whether or not so resident) has habitually attended public worship in the parish during a period of six months prior to enrolment. The making of such a declaration by a person of either sex and of the age of eighteen years at least, unless acceptance be refused for cause to be shown, entitles the declarant to have his or her name entered upon the church electoral roll of the parish desired. No person is entitled to be upon the roll of more than one parish in the same diocese. The roll is to be kept and revised by the Parochial Church Council; and refusal to enrol is subject to appeal to a Lay Electoral Commission nominated as the appeal tribunal in each diocese.

ELECTIONS—ANNUAL AND OTHERWISE.

In every parish there is to be held annually, not later in the year than in Easter Week or in the following week, the

annual parochial church meeting of all persons whose names are entered upon the electoral roll. At this meeting the following are to be presented by the outgoing Council for discussion and adoption (if approved) :—

(*a*) A copy or copies of the roll ;

(*b*) An annual report on the proceedings of the Council and on the financial affairs of the parish ;

(*c*) The audited accounts of the Council for the year ending on the 31st of December immediately preceding the meeting ; and

(*d*) A report upon the fabric, goods and ornaments of the church or churches of the parish.

The meeting is then to elect lay representatives :—

(*a*) To the Diocesan Conference, unless the Diocesan Conference shall otherwise determine ;

(*b*) To the Ruri-decanal Conference, when it exists ; and

(*c*) To the Council of the Parish (the " Parochial Church Council ").

" Sidesmen " to assist the churchwardens in their duties are also to be elected by the meeting conjointly with the minister ; if the meeting and he do not *agree* as to who shall be sidesmen, the minister is to nominate half and the meeting is to elect the other half. (These sidesmen are quite distinct from the other elected lay representatives, and their election is provided for by s. 14 of the Parochial Church Councils (Powers) Measure, 1921.) Apart from his right to take part in the choice of sidesmen, the minister, although entitled to preside, if present, is only entitled to vote in the elections of the various lay representatives if a casting vote is required. In addition to the *annual* parochial church meeting a special meeting of the electors on the electoral roll must be called upon a written requisition to the minister signed by not less than one-third of the *lay* members of the Parochial Church Council.

The Parochial Church Council.

The Parochial Church Council is to consist of (*a*) the minister of the parish ; (*b*) one licensed assistant curate ; (*c*) the churchwardens ; (*d*) all lay members of the Ruri-decanal and Diocesan Conferences and of the Church Assembly whose names are on the electoral roll of the parish ; (*e*) such number of lay representatives as the annual parochial meeting decides ; (*f*) co-opted members not exceeding in number one-fifth of the elected lay representatives.

The minister is to be chairman, but a lay member is to be elected vice-chairman.

The Ruri-Decanal Conference.

The number of lay representatives to be elected by each parish in a rural deanery is decided by the Diocesan Conference. They hold office for one year or such longer period not exceeding three years as the Diocesan Conference decides. Apart from the elected lay members the following are *ex officio* members of the Ruri-Decanal Conference :—

(*a*) All members of the House of Laity whose names are entered upon the roll of any parish within such rural deanery ; and

(*b*) In any case where such Ruri-Decanal Conference elects lay representatives to the Diocesan Conference, all persons who are so elected.

The Diocesan Conference.

The annual parochial meeting in each parish is to elect such number of lay representatives to the Diocesan Conference as that Conference shall from time to time appoint. In some dioceses, however, the Conference may, at its own option, decide upon another form of creating its own membership instead of by annual election at the parochial meeting. In that case the lay representatives to the Diocesan Conference must be elected either—

(1) by the lay representatives in each Ruri-Decanal Conference voting in such manner as, subject to the provisions of the next succeeding rule, the Ruri-Decanal Conference may determine ; or

(2) partly at the annual meetings, and partly by the lay representatives in the Ruri-Decanal Conferences ; or

(3) according to a scheme approved by the Diocesan Conference whereby parishes may be grouped for the purpose of jointly electing lay representatives to the Conference ;

(4) according to a scheme approved by the Diocesan Conference combining two or more of the methods of election authorised by these rules.

Lay representatives to the Diocesan Conference hold office for three years.

It will thus be seen that the rules under the statute provide for a complete system of lay representation in the councils of the Church upon a basis that gives little cause for the suggestion often heard that the laity have no voice in those councils. The lay churchman attends his parish meeting. There he elects representatives to the Council of his own Parish, to the Conference of the Rural Deanery in which his church is grouped, and to the Conference of the Diocese. He does not actually vote for the members who will represent him in the Church Assembly (House of Laity)—they are chosen in manner now to be described.

Elections to the House of Laity.

Members of the House of Laity are to be elected every five years by the Diocesan electors in the several Diocesan Conferences, according to the principle of proportional representation (see below). The electors in each diocese are—

(1) the lay representatives for the time being in the Diocesan Conference ;

(2) the lay *ex officio* members of the Diocesan Conference ; and

(3) fifteen or any less number of teachers and students (not being in Holy Orders) selected by the other lay members of the Diocesan Conference in such manner as may be prescribed by the Conference to represent the members of Universities, University or Training Colleges, and school staffs in the diocese who are members of the Church of England.

The number of members of the House of Laity depends upon the number of persons on the Electoral Rolls. Each diocese will be represented in proportion to the number of electors upon the church rolls of the diocese as revised for the annual meetings held in the year immediately preceding the year in which the quinquennial election is held. (That means that the number of members to be sent to the House of Laity from each diocese at the forthcoming election at Easter, 1930, will depend upon the number of voters on the rolls made up for the present year, 1929.) Each diocese forms an electoral area, but the Diocesan Conference of any diocese may, for the purposes of any election, divide a diocese into two or more areas, and apportion the number of members of the House of Laity to be elected for the diocese among such areas, and the election will then be conducted in each area as if such area were a separate diocese. The method of election is by voting on the principle of proportional representation by the method of the single transferable vote, under rules to be made from time to time by the Archbishops.

Such, in brief, are the arrangements for lay representatives as amended by the Representation of the Laity Measure, 1929. That Measure (copies of which are, of course, obtainable from H.M. Stationery Office for the trifling sum of sixpence) contains much detail in regard to the procedure at and in connexion with these representative bodies, whilst all the necessary forms are set out in the appendices. The whole Measure is framed in the clearest possible language—in marked contrast to what is to be found in many modern Acts of Parliament.

Husband and Wife.

Summary Jurisdiction where Parties Abroad.

THE police court case of *Matchus* v. *Matchus*, reported in our issue of the 12th inst., page 660, raises a very wide question. Have justices jurisdiction in cases where either of the parties is abroad? We need not repeat the details of the case, but we would point out that the magistrate's judgment implies that a complainant in a foreign country seeking to enforce a maintenance order, can appear by counsel or solicitor, and that a defendant, on whom no summons could lawfully be served, can appear by counsel or solicitor to defend a summons to vary a maintenance order.

The issue of the enforcement of an order by a person abroad, or the determination of an application to vary, where the defendant is abroad, can arise in bastardy cases as well as in husband and wife cases.

The position under the Bastardy Acts is stronger for the woman than that under the Summary Jurisdiction (Separation and Maintenance) Acts. An order under the Bastardy Acts can be enforced by the collecting officer on the request in writing of the person to whom the money is payable (Affiliation Orders Act, 1914, s. 1 (3)). This applies only to bastardy orders. It is submitted that s. 9 of the Summary Jurisdiction (Married Women) Act, 1895, does not import this piece of procedure.

Under s. 30 (3) of the Criminal Justice Administration Act, 1914, the maintenance provision in an affiliation order (and any other order for the periodical payment of money) can be varied. A similar provision occurs in the Summary Jurisdiction (Married Women) Act, 1895.

Now, if the mother of an illegitimate child be abroad, she either can or cannot enforce the maintenance order through the collecting officer. If she can, she has only to stay abroad to avoid any possibility of reduction, for no summons can be served upon her in a foreign country. This is so one-sided that it offends against natural justice, and it would seem that when a person removes beyond the limits within which the process of the court she invokes will run, she ought not to be allowed to enforce her order by proxy.

If she, or a married woman seeking to enforce an order against her husband, instructs a solicitor in England to act for her, the position is really no better.

Matchus v. *Matchus* deals only with this case and would have us say that she can instruct a solicitor to accept service of process on her behalf, and can both enforce her order and defend a summons to vary. Clearly the summons against her is not served within the Summary Jurisdiction Acts, and all the reliance of the court must be upon s. 13 of the Summary Jurisdiction Act, 1848. But we submit again, that a person who is not summonable at all cannot instruct anyone to appear on her behalf. If we are wrong it is manifest that the defendant, although able to place his application for variance before the court, is still deprived of a valuable right, that of calling the complainant as his witness.

Indeed, in affiliation cases, whether he shall be heard at all will depend upon the volition of the other party. If she proceed merely through the collecting officer, she can enforce, and be immune from variance. If she instruct counsel she opens a door to the man, but merely incidentally. The rights of one party cannot depend on such a technicality.

We cannot help feeling that the magistrate misdirected himself upon the law through not considering the whole range of possibilities. We consider that there is a fundamental error of principle in the assumption that counsel can be instructed to act in a court of summary jurisdiction for a person who is out of reach of the court's process.

HENRY WALTERS, LAURENCE WELCH and SYDNEY EVELYN WALTERS, solicitors, Stone & Eccleshall, under style of Hy. Walters and Welch. 24th September. Debts by L. Welch and S. E. Walters, who will carry on the practice under old style.

A Conveyancer's Diary.

BY HERBERT W. CLEMENTS, ESQ., Barrister-at-Law.

Discretion to Postpone Conversion.

The editor has sent me a copy of a letter from the Public Trustee, which appears in another column, with a suggestion that I should comment upon it.

The point raised by Sir Oswald Simpkin is of considerable interest to the profession. Shortly, it is that there is an important difference between a power to postpone the conversion of investments and a power to retain existing investments. The distinction, he says, lies in this, that where there is a trust for sale with power to postpone, the trust for sale is paramount and the power to postpone merely ancillary, whilst a power to retain investments not otherwise authorised gives the trustees an absolute right of retention. In the former case the Public Trustee considers that, should any loss arise by reason of the postponement of conversion the *onus* will lie upon the trustees to show that their conduct was justified, whereas, in the latter case, the burden is on the beneficiaries of proving that the trustees have acted improperly.

Sir Oswald refers to two cases in support of his conclusions. The first is *Re Chaytor* [1905] 1 Ch. 233. In that case a testator devised and bequeathed his residuary real and personal estate to trustees upon trust for sale, with power to postpone such sale so long as his trustees should think proper, and to retain any investments subsisting at his death, whether of the kind thereby authorised or not. The trustees having retained certain shares (not being authorised investments) the question was whether the tenant for life was entitled to the whole income arising therefrom, or only to interest at 3 per cent. upon the value of those shares at the date of the testator's death. There was no express bequest of the income resulting from unrealised investments, the gift to the tenant for life being of the income arising from the proceeds of sale or the investments for the time being representing the same. Warrington, J., held that, upon the true construction of the will, the tenant for life was not entitled to the whole income, but only to interest upon the amount which would have been realised if a sale had taken place immediately after the death of the testator. It will be noticed that this was a case entirely between the tenant for life and remainderman, no question arising with regard to the liability of the trustees.

The other case referred to by Sir Oswald is *Re Inman* [1915] 1 Ch. 187. There a testator gave all his real and personal property to trustees upon trust for sale and conversion, and empowered his trustees to postpone the sale, and also empowered his trustees to permit his personal estate invested in any stocks, funds, etc., to continue in the same state of investment so long as they should think fit. Neville, J., distinguishing *Re Chaytor*, held that the clause giving power to the trustees to retain investments held at the testator's death, was independent of the power to postpone, and that upon the true construction of that will the tenant for life was entitled to the whole income of investments retained under that power, although not such as were authorised for the investment of the proceeds of sale.

From these cases it appears that the Public Trustee deduces the proposition already mentioned. The reasoning seems to be that, as the power to postpone is ancillary only to the trust for sale, and investments retained under that power are not permanently held as part of the trust estate, but only temporarily for the convenience of administration, the burden of justifying the retention is thrown upon the trustees in the event of a loss occurring.

I do not know what particular form of power to postpone Sir Oswald has in mind. The form commonly in use gives the trustees power to postpone conversion for such period as they shall think fit without being responsible for loss. Whatever form of words is used, however, the postponement clause vests a discretion in the trustees as to the time at which a sale shall take place.

The position of trustees with regard to the exercise of such a discretion was before the court in *Re Schneider* (1906), 22 T.L.R. 223. There a testator gave all his property to trustees upon trust for sale and conversion, with power to postpone conversion so long as they should in their uncontrolled discretion think fit. The trustees postponed the sale of certain shares which depreciated in value, and it was sought to make them liable for the loss. In the course of his judgment, Warrington, J., said: "There is no doubt about the law. In such a case as the present the discretion of the trustees is not capable of review by any tribunal, always supposing that there is no *mala fides* with regard to its exercise."

It follows that in that case the burden of proof was thrown upon the beneficiaries, who were seeking to make the trustees liable, for *mala fides* must always be pleaded and proved by those who set it up.

This seems to be in accordance with the general rule that where trustees have a discretion and exercise it, the court will not interfere unless it is shown that they have acted improperly.

It may be doubted whether the cases turning only upon questions between tenant for life and remainderman can be relied on as conclusive authorities with regard to the liability of trustees in the same state of facts.

There seems to be no direct authority upon the interesting point raised by Sir Oswald Simpkin, and I, for one, am grateful to him for directing attention to it. In future, readers of THE SOLICITORS' JOURNAL will doubtless bear in mind the warning conveyed in Sir Oswald's letter, and see to it that in drafting wills and settlements a power to retain investments, independently of a power to postpone conversion, is inserted when the intention of the testator or settlor so requires.

Of course, the question as to the liability of the trustees does not arise in the case of a trust for sale of land, the trustees being protected by the L.P.A., 1925, s. 25 (2).

Landlord and Tenant Notebook.

(3) DECISIONS UNDER THE LANDLORD AND TENANT ACT, 1927.

Law of Landlord and Tenant—Summary of Decisions— *(continued from p. 672).*

Curiously enough, there have not been very many reported decisions under the Landlord and Tenant Act, 1927.

Dobbin v. *Ogden*, 45 T.L.R. 349, which went to the Court of Appeal is, perhaps, the most important reported decision under the Act. It is to be remembered that the Act came into operation on the 25th of March, 1927, and that that day happened to be a Sunday. Just before the Act came into operation, the question arose as to the position of tenants whose tenancies were due to expire on the 25th of March, 1928, as far as claims for compensation and for a new lease were concerned; and the difficulty occasioned by the fact that the 25th of March happened to be a Sunday, was accentuated by the fact that the Rules with which the notices for compensation or a new lease had to comply, were issued just before the 25th March, and copies thereof were, in many cases, difficult if not impossible to obtain. Now a notice served on a Sunday would have been perfectly good (see *Sangster* v. *Noy* (1876), 16 L.T.R. 157), but many tenants under an erroneous impression that a notice served on Sunday would be bad, served their notices prior to the 25th March 1927, and therefore at a time when the Act had not yet come into operation. The Court of Appeal, however, reversing the decision of the Divisional Court, held that such a notice, served and received by the landlord before the commencement of the Act, would be good, provided that it complied with the other requirements of the Act.

Another decision of importance is the case of *Donegal Tweed Co. Ltd.* v. *Stephenson*, 45 T.L.R. 503. That case deals with the question as to whether the court has power to alter the periods of the service of the various notices. On this point reference should be made to s. 22 of the Act and also to r. 14 (3) of the County Court Rules, Ord. 50 B.

Section 22 provides that where in any proceedings under this Act the tribunal has fixed or allowed any period for the doing of any act or thing, the tribunal may, on an application being made by any party to the proceedings, either before or after the expiration of the period so fixed or allowed, extend that period. Rule 14 (3) provides that "the Registrar may at any time report to the Judge in relation to any such application and the Judge may thereupon give or forward by post to the Registrar such directions in writing as may be necessary including an order for the extension of any time limited for the doing of any act or thing provided for by the Act or this Order."

If these provisions are carefully examined, however, it will be seen that the power of extension applies only to the doing of any acts or things for the doing of which a time has been fixed by the tribunal and it does not refer to such acts or things for the doing of which a time has been prescribed by the Act itself, as, for example, the service of notices of claim, etc. It was accordingly held in *Donegal Tweed Co.* v. *Stephenson* that the tribunal had no power to alter the period within which a notice claiming a new lease was required to be served by the Act.

Another important decision is that of *Stumbles* v. *Whitley*, 45 T.L.R. 517. That case decided that where a tenant is entitled to a new lease of premises within the Act, the subject-matter of the grant made under the new lease must be the same as that granted by the original lease. It was accordingly held in that case that the tenant was entitled to have a grant of incorporeal rights—in that case these rights were fishing rights over other property—included in the new lease.

Coming to Pt. 2 of the Landlord and Tenant Act, 1927, which makes alterations in the general law of landlord and tenant, there is the important case of *Gardiner* v. *Cone* [1928], 1 Ch. 955, to be carefully noted. This case was decided under s. 19 (1) (*a*) of the Act, which provides that where there is a covenant against assigning, underletting, charging or parting with possession, without licence or consent, a proviso is to be read into the lease to the effect that such licence or consent is not to be unreasonably withheld. This section, it should be noted, is of retrospective operation, since it applies to all leases whether made before or after the commencement of the Landlord and Tenant Act, 1927. The precise extent of the retrospective operation of this provision, however, was considered in *Gardiner* v. *Cone*, it being held there that the Act did not apply to breaches of covenant committed before the Act came into operation, so that this provision was of no avail in such cases.

It may incidentally be noted that the principle of *Gardiner* v. *Cone* will equally apply to sub-ss. (2) and (3) of s. 19 as well, the former of which refers to covenants restricting the making of improvements, and the latter to covenants restricting user.

Our County Court Letter.

PERSONAL INJURIES FROM DANGERS UNDERFOOT.

THE difficulty of establishing liability against the landlord of premises is shown by three recent cases. In *Templeton* v. *Coleman*, at Birmingham County Court, the sum of £100 was claimed as damages for negligence, the plaintiff being a doctor who had been called out to visit a patient. The latter lived with her husband, who was the tenant of the defendant's house, the only means of access being along a side entry, and up five steps in the yard to ground which was also in the possession and control of the defendant. Between the entry and the upper ground there was an unfenced wall separating the two levels of the yard, and it was alleged that this wall was out of repair and dangerous, and that the plaintiff—in ignorance of its condition—came out of the lighted house into

the dark, and in feeling his way to the steps fell over the wall and ruptured a tendon in one leg. The defence was that the plaintiff was neither the invitee nor the licensee of the landlord, who was not obliged to light the steps, and if anyone chose to walk in the dark—where there might be a danger—he did so at his own peril. His honour Judge Dyer, K.C., observed that the doctor was invited by the tenant, and was, therefore, the landlord's licensee, in which capacity he must take the premises as he found them, apart from any hidden source of danger. The plaintiff knew something of the locality, and was in a position to inform himself of the steps, and there was, therefore, no evidence of any hidden danger. The damages were exaggerated, as although one item was a loss of £25 in the practice, not a single panel or private patient had been lost, and if liability were established the amounts awarded would have been £20 special, and £15 general damages. Judgment was given for the defendant, however, with a stay of fourteen days in case the matter went further.

In *Leadbetter* v. *Emerson*, at Lincoln County Court, the claim was for £89 2s., as damages for negligence in the maintenance of the lid of a coal shoot, which was alleged to have tipped up when trodden upon by the plaintiff. The latter had sustained a sprained ankle and bruises up to the knee, and was accommodated in the house by the defendant's tenant until the arrival of a bath chair. It was submitted that there was no evidence of negligence, as the plaintiff had known of the existence of the coal shoot or grating, which had never given trouble over a long period of years, but the contention for the plaintiff was that she only had to prove that her foot went down the coal shoot, without proving any negligence as to how the accident happened. Evidence for the defendant was given by an ironmonger, who had made a chain for the shoot lid, which was supported all round and could not have given way if trodden upon. His honour Judge Chapman was not satisfied that the accident had happened as suggested by the plaintiff, and judgment was therefore given for the defendant with costs.

In *Calvert* v. *Liverpool Exchange Company*, in the Liverpool Court of Passage, the plaintiff had slipped on a glass disc forming part of a pavement, but the defence alleged contributory negligence, viz., that the plaintiff had not kept a proper look-out, and had stepped on to the disc with muddy or slippery boots. The defendants' records showed that the discs had been in position ever since the building was constructed sixty years ago, and although a new design of glass light was being introduced into the pavement, that had nothing to do with the accident, as the particular discs concerned were still in the same condition as before, and there had been no previous complaint as to their being dangerous. The discs were one and three-quarter inches thick, were let into an iron frame perfectly level with the footpath, and were equal to the general concrete surface composing the passage, Sir W. F. K. Taylor, K.C., the presiding judge, held that no negligence by the defendants had been established, and judgment was given in their favour, no order being made as to costs.

Practice Notes.

THE MODERNISATION OF ELECTRICAL EQUIPMENT.

(*Continued from p.* 626.)

III.

In the recent case of *Director of Public Prosecutions* v. *Chesterfield Corporation* the defendants were charged with having failed to make dead a switchboard during the removal of temporary hoisting equipment. The contractors, the English Electric Company, Limited, had completed work on a transformer, and one of their electricians had reared a ladder against a girder. He moved along the girder, and trod upon a scaffold pole which he had previously unloosed at one end, the result being that he fell 10 feet and came in contact with a live bar charged with 33,000 volts, and was immediately killed. It was contended that, as the other end of the pole was within 16 inches of a live cable, the work he was proceeding to do was even more dangerous, and that the whole switchboard should have been made dead before he was allowed to undertake the work. The defendants' deputy manager stated that all necessary apparatus had been made dead by himself and the electrician, but the latter had slipped. It was pointed out that it was unwise for the man to have trodden on the loose pole, and that this had brought about what was otherwise a physical impossibility—the touching of the live bar. Two experienced men had not foreseen what might happen, and the submission was made that there was no case to answer. Mr. D. N. Turner, chairman, announced that the bench upheld the submission that there had been no breach of the Factory Acts, and an application for a case to be stated was refused.

THE BASTARDISATION OF ISSUE.

We discussed the above topic in reference to birth certificates in our issue of the 6th October, 1928 (72 Sol. J. 651), but the subject is not one which would be expected to arise in reference to workmen's compensation. In the recent case of *Hughes* v. *Thomson and Dixon (Doncaster) Limited*, however, at Doncaster County Court, the applicants were two infants, who claimed compensation as dependent children of a deceased workman named Thornton. The applicants' mother was their next friend, and the evidence was that she married in 1898, but that her husband became tired of married life after a fortnight, and had not been seen for twenty-four years. Eighteen months after the desertion, the applicants' mother had begun to cohabit with Thornton, by whom she had had thirteen children, but only three had survived, the ages of the applicants being now sixteen and eleven years respectively. The respondents contended that the evidence did not prove that the applicants were the children of Thornton, as—when the eldest of the three surviving children of Mrs. Hughes was registered—the certificate showed no father's name, but in the case of the two applicants the name of the father was given as Hughes. His Honour Judge Hildyard, K.C., held that the certificates did not rebut the actual evidence of fact by other witnesses, and that the children were those of Thornton. An award was therefore made of £363 12s., against the respondents as employers, the claim being dismissed as against Henry Barrett and Sons, Limited (of Bradford), the sub-contractors.

OVERTIME PAYMENTS TO FARM WORKERS.

(*Continued from p.* 638.)

II.

The question of a disabled workman's right to payment for overtime was recently considered at Overton, where the employer was charged with paying wages below the agricultural rate. The workman was handicapped by a twisted foot, which entitled him to a permit under the Agricultural Wages (Regulation) Act, 1924, s. 2 (3), exempting him from the minimum wage provisions. The defendant had employed the workman by the week for 5s. in cash, 9d. insurance stamp, and six days' board of the value of 13s. 6d.—a total wage of 19s. 3d. The application for the permit was due in August, 1928, but was not in fact made until January, 1929, the result being that arrears had accumulated to the amount of £18 0s. 9d., but—assuming the permit had been dated back—the arrears were £5 9s. 8d. The committee had fixed overtime at 7½d. per hour, and the prosecution alleged that the man had received nothing for Saturday afternoon and Sunday work. The defendant's case was that the workman was never up in the morning, and therefore had not worked the statutory number of hours, but Mr. Warburton Lee, chairman, stated that the bench would impose a fine of 5s. and order the payment of £3 15s. to the workman. It transpired that the defendant had had an opportunity of settling the matter for £5, but he had denied all liability and the Ministry had therefore taken proceedings.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Beetles and Unfitness for Habitation.

Q. 1753. A is the lessee of an unfurnished mansion flat at a rental of £250 per annum, and the unexpired term of his lease is about six years. A incurred considerable expense in re-decorating the flat. The flat in question is infested with a particularly obnoxious species of beetle and is undoubtedly unfit for habitation. There is not any covenant by the lessor that the flat was fit for habitation, and the authorities do not seem to be very helpful to the lessee in such a case. Has any recent decision made any material difference to the position in a case of this kind, and has the lessee any claim for—

(*a*) Cancellation of the lease ?

(*b*) Damages ?

A. No recent decision has made any material difference as between landlord and tenant. In *D'Arcy* v. *Regal Cinema, Ltd.*, *Times*, 19th and 20th March, 1929, the occupier of a flat obtained judgment for £481 as damages for nuisance against the occupiers of the flat below, by reason of an invasion of cockroaches (viz., Blatta orientalis), the jury having found negligence in not discovering the nuisance caused by the accumulation of vegetable refuse—from a café formerly carried on in the lower flat. The above lessee, A, has no claim for cancellation or damages against the lessor, as there is no statutory requirement of fitness in the case of a dwelling-house with the above rental. Further investigation, however, may reveal a cause of action against a neighbour, as in the case cited above.

Separate Judgments against Joint Defendants.

Q. 1754. A sued B and C by specially endorsed writ for principal and interest on B and C's joint and several covenant. Judgment was signed against B in default of appearance with costs. C entered appearance and on the strength of an affidavit containing false statements obtained leave to defend, and the action was sent to the County Court for trial against C only. Ultimately judgment was obtained in the County Court against C, amounting to £44 11s. C is a man of straw, and although A may eventually recover the debt and costs in the High Court judgment from B, the County Court costs look to be irrecoverable. Is there any inexpensive means of consolidating the two judgments so as to make them enforceable jointly as well as severally against B and C, or by which the costs awarded against C can be recovered from B ?

A. There is no method of consolidating the two judgments, as the matter is *res judicata* against B, and the amount recoverable from him cannot be increased at this stage. The wiser tactics would have been to postpone signing judgment by default against B, until the result of the proceedings against C were known. The Judgments Extension Acts and Orders only apply as between courts here and abroad, and are not available as between the High Court and the County Courts in this country.

Infringement of Copyright in Songs.

Q. 1755. I am acting for a local political club. In the winter months the club engages artistes on Saturday in each week to give turns. The artistes sing copyright songs which they provide themselves. They also engage their own musicians. My clients have been approached by a society known as The Performing Rights Society with a view to taking out a license through them for the works and songs to be used at the premises. They contend that if the club allow copyright works and songs to be used at their premises they (the society) have a right of action and can claim an injunction. My contention is that no right of action exists against my clients, but that any proceedings would have to be taken against the actual artistes. Will you kindly give your views as to whether I am right ?

A. A right of action exists against the club (if registered) or against representative members (if the club is an unincorporated body), provided that the club authorises the performance. Any official may also be liable either as licensee or as the actual organiser. See *Performing Rights Society* v. *Ciryl Theatrical Syndicate* [1924] 1 K.B. 1. The club may endeavour to protect itself by stipulating that the artistes shall not infringe any copyright, but an infringement may still take place without the club either knowing, or having any reasonable ground for suspecting, that such an event is impending. It will then become important to ascertain whether the artiste responsible was a servant of the club or an independent contractor, as the club will only be liable in the former eventuality. The tests for deciding to which category the artiste belongs are laid down in *Performing Rights Society* v. *Mitchell and Booker* (*Palais de Danse*) *Ltd.* [1924] 68 Sol. J. 539.

Participation in Benefits of Golf Club's Insurance.

Q. 1756. A golf club wishes to insure itself as a club, and each individual member and the visitors against third party claims. A policy has been taken out on behalf of the committee and members of the club jointly and severally with a memorandum endorsed that visitors are also covered. Can an individual member or a visitor make a legal claim, if necessity arose, as an insurance is a contract of indemnity, and it is quite probable that the member in question would not know that the policy had been taken out and, in addition, how could he prove he had any insurable interest ?

A. The possible claims are of two kinds : (*a*) An individual member or visitor might himself claim as the injured third party but would have difficulty in proving his claim owing to the doctrine of *volenti non fit injuria*, i.e., he must be taken to have accepted the risk of playing near a dangerous hole, as where the fairways are parallel but running in opposite directions. (*b*) An individual member or visitor might be sued for negligence in his play, in which case he would be entitled to claim reimbursement from the insurance company, even if unaware of the existence of the policy until after the accident, or the issue of the writ. A member of the club is entitled to be informed of measures taken for his protection, and his insurable interest is constituted by (1) the danger to which he is exposed of being sued for accidents, (2) the proportion of his subscription—infinitesimal though it may be—which is devoted to the payment of the premium. A visitor who pays green fees is in the same position, if allowed to play with or without introduction, but a visitor who is a guest of a member is a volunteer, and in the absence of consideration it appears that he can have no claim under the contract of insurance. The doctrine of subrogation would not apply to the extent of enabling him to stand in the shoes of his introducer, and so participate in the latter's benefits. As between the insurance company and such a visitor, the arrangement is gratuitous, and the policy (being founded upon a *nudum pactum*, and not upon a contract) is unenforceable. All visitors should therefore be charged a fee for their own protection, or it should be paid on their behalf by the introducers.

Procedure under Adoption Act.

Q. 1757. A client of mine married a woman who had had an illegitimate child by another man, against whom she obtained an affiliation order. The husband knew the circumstances before marriage and desires to adopt the child under the Adoption of Children Act, 1926. The magistrate's clerk expresses the opinion that the husband only should apply for adoption as the mother cannot apply, she being already the legal guardian. Section 5 (1) of the Act provides that upon an adoption order being made, all rights, etc., of the parent in relation to future custody, maintenance and education, including rights to appoint a guardian, shall be extinguished and vested in the adopter. Your opinion is therefore asked as follows :—

(1) Can the application be made by both parties jointly, notwithstanding that the mother is already the parent and guardian ?

(2) If the answer to (1) is in the negative, can a provision be made in the order preserving the rights and liabilities of the mother ?

Your registered subscriber feels that he ought to anticipate the possibilities of future differences between the husband and the wife.

Q. (1) The application can be made by both parties jointly, as the proviso to s. 5 (1) of the Act contemplates that two spouses may be the adopters, and there is no exception (either express or implied) in a case where one spouse is also a parent. The fact of the mother being already the parent and guardian does not bar her rights under the Act, as these apply in confirmation, and not in derogation, of her common law rights.

(2) This does not arise, but the effect of an adoption order excluding the mother would probably be to create differences between the parties.

Positive Covenant Relative to Freehold Land—Burden Thereof.

Q. 1758. In 1925 A, the owner of a large field called Whiteacre, sold a portion thereof to B, and covenanted with B to erect and maintain a fence separating the remaining part of the field from the portion sold to B. A did not erect this fence, and subsequently died, and his executors sold the remaining portion of Whiteacre to C, and expressly conveyed it subject to the covenant entered into by A to erect the said fence, but no covenant by C to perform the covenant or to erect the fence was inserted in the conveyance. B requires the fence to be erected and has called on A's executors to carry out the covenant entered into by A, and they have passed on the request to C who declines to comply therewith on the ground that he is under no liability to do so. Is he correct ? If so, could the covenant be enforced against A's executors and would they have any remedy against C ?

A. C's contention is correct. The burden of this positive covenant does not run with the land and a purchaser from A's executors is not bound thereby though he had notice of the covenant (*Austerbury* v. *Corporation of Oldham* (1885), 29 Ch. D. 750). The foregoing remarks are limited to that part of the covenant relative to the erection of the fence. (See "Everyday Points in Practice," Pt. VI, s. 1, Case 3.) We think A's executors would be liable in damages, but without remedy against C, no contract (express or implied) of indemnity subsisting between them and him.

Pensioner's Right to Workmen's Compensation.

Q. 1759. A workman who is permanently disabled is receiving compensation by weekly payments at the maximum rate under the Workmen's Compensation Act. He will very soon attain the age of sixty-five years, when he will become entitled to an old age pension as an insured workman. Will the receipt of this pension in any way affect his right to the weekly payments of compensation at the maximum rate, or will the receipt of compensation affect his right to receive a pension ? If the employers now wish to pay a lump sum in settlement of his right to compensation can the fact that he will become entitled to a pension on attaining the age of sixty-five years be taken into account ?

A. (1) The question whether the pension will affect the right to compensation depends on the source of the fund. The pension must be ignored only if wholly contributed to by the workman, but if wholly contributed to by the employers, the pension must be taken into account, as in *Considine* v. *M'Inerney* [1916], 2 A.C. 162. If partly composed of deductions from pay, the extent to which the pension must be regarded is a question of degree. (See *Langford* v. *Port of London Authority* [1926], 135 L.T.R. 625. (2) The question whether the compensation affects the right to a pension depends on the terms of the trust deed. (3) A lump sum can only be paid by agreement, and the only issue is whether the amount is reasonable. The fact of a pension being payable at sixty-five will doubtless be borne in mind by each party, but it is not an issue before the court recording the memorandum.

Absent Owner's Liability for Negligent Driving (II).

Q. 1760. A, the owner of a car, leaves it with B for certain repairs, which necessitate its removal to another branch of B's garage. The car (with A's consent) is driven there by one of B's employees, and on the return journey the same driver negligently injures a pedestrian C. Is B liable to C or can it be said that the driver was acting as A's agent, thus making A liable for the injury to C.

A. It is a question of fact whether the driver was acting as A's agent, so as to make A liable, and it is important to ascertain the nature of the consent given by A. If A merely acquiesced in the removal of the car, the inference is that A did not thereby assume control of the driver, who remained the servant of B, the independent contractor, and B is therefore liable to C. It is unlikely that B requested A to arrange for the car's removal to the other branch, and that A borrowed B's driver for the purpose, but some such arrangement would be requisite to render A liable to C. A decision against A is *Parker* v. *Miller* [1926] 42 T.L.R. 408, but the car had there been lent to a friend, and there was evidence that the absent owner retained the right of control. The true test is whether the employer, A, intended to control the servant of the independent contractor, B, and to regulate his method of work. See *Bull and Co.* v. *West African Shipping Agency* [1927], A.C. 686. It therefore, appears that B, and not A, is liable to C.

Re-arrest after Estreatment of Bail.

Q. 1761. On the complaint of his wife a warrant was issued against A for disobedience of an order for maintenance under the Summary Jurisdiction (Married Women) Act, 1895, and in due course A was arrested and brought before a court of summary jurisdiction. He was remanded on bail in his own recognisance in the sum of £5 to appear at the court a week later. A did not then appear. The court could estreat the bail in accordance with the Summary Jurisdiction Act, 1879, s. 9, but what procedure is necessary whereby A can be brought before the court to answer the original complaint for which the warrant was issued. Can he be re-arrested by the police on the original warrant or must a fresh complaint on oath be made by the wife and a fresh warrant issued ? Have the magistrates power to issue any other warrant for A's arrest in respect of the matter, and if so, on whose information or complaint, and on what charge ?

A. The first warrant has been executed, and is therefore no longer in force. A fresh complaint on oath must accordingly be made by the wife, and a second warrant issued, as the magistrates have no power to issue any other warrant. Bench warrants may be issued on the court's own volition, on a prisoner's failing to surrender, but this procedure is only available at quarter sessions or assizes.

Correspondence.

Administration of Wills.

Sir,—In the interest alike of those who benefit under wills and of those whose duty it is to administer them, may I make a suggestion that in preparing wills special regard should always be paid, and if practicable the attention of a testator should always be called, to the difference between a power to *retain* existing investments which would otherwise be unauthorised and a power merely to *postpone* the realisation of unauthorised investments.

The difference is very important. To put it broadly, under a power to *retain*, trustees are entitled in the honest exercise of their discretion to keep any existing investments which appear suitable for the trust; if an investment so retained goes wrong, and the beneficiaries wish to attack the trustees, the burden is on the beneficiaries to prove that the trustees have acted negligently or carelessly or imprudently in holding the investment. On the other hand, under a power to *postpone* realisation, the primary duty of the trustees is to realise; they are not entitled to keep an unauthorised investment unless they have reasonable grounds for thinking (and are unanimous in thinking) that it will appreciate in value; and if an investment so kept goes wrong, the burden is on the trustees to justify their conduct and not on the beneficiaries to sustain the attack. In other words, the object of a power to *retain* is to give trustees full discretion over any investments held by a testator; the object of a power to *postpone* is merely to prevent the premature slaughter of a promising investment, and is not to give the trustees full discretion. Moreover, in order to justify permanent retention, the power to retain must be independent of and not merely ancillary to the trust for conversion (*cf.*, *Re Chaytor* [1905] 1 Ch. 233, and *Re Inman* [1915] 1 Ch. 187).

Failure to appreciate this difference is a very common source of misunderstanding not only with laymen but also with solicitors, and there is a wide-spread impression that a power to postpone realisation justifies permanent retention of an unauthorised investment, merely because the investment is thought to be a sound one. This misunderstanding is a constant cause of trouble. On the one hand it frequently leads to friction with beneficiaries who think themselves hardly used if a power to postpone realisation is not treated by the trustees as a power to retain; on the other hand it often defeats the intention of a testator by compelling trustees, who are endowed merely with a power to postpone, to realise investments which it is morally certain the testator would have wished them to keep. Sometimes it may lead trustees into a very dangerous position.

The truth is that in a will the administrative directions in a residuary gift (trust to convert—power to postpone, etc.) and the investment clause are far too often treated as merely matters of common form. In a great many cases they are the crucial point in the whole administration and in the beneficiaries' finances, and they should always be most carefully considered with reference to the particular circumstances of each testator.

The points which I have raised may seem highly technical, but they are of the greatest practical importance to testators, to beneficiaries and to trustees.

OSWALD R. A. SIMPKIN.

Public Trustee Office, W.C.2,
17th October.

Banknotes by Registered Post.

Sir,—A point of some interest to bankers who are frequently sending banknotes by registered post arises, and as I have not been able to find any decision on the point in question, I should be glad if you would deal with the enquiry through your valued columns.

The Post Office regulations say that "compensation in respect of banknotes will be paid only when the money is enclosed in one of the registered envelopes sold by the Post Office . . ."

It is the custom of bankers to insure banknotes sent by registered post quite outside the insurance provided by the Post Office authorities, and not require compensation from the postal authorities in case of loss.

The point that arises is whether by not using one of the registered letter envelopes sold by the Post Office in which the sender encloses the notes, an insurance company would be able to successfully contend that there was contributory negligence, and thus avoid paying any claim for loss which might arise.

It should be mentioned that the policy of insurance merely refers to "registered post," whatever this may mean.

The Post Office in their regulations say that the registration of the packet is not in itself regarded as evidence of satisfactory packing.

If simple registration of notes in an ordinary envelope not supplied by the Post Office would be regarded as a full compliance with registered post mentioned in the policy, then it would seem an insurance company would be liable, but seeing that the postal authorities say that if they are to be liable for compensation a special envelope must be used, it might be contended that there is contributory negligence in not using such an envelope when taking insurance cover through an ordinary insurance company.

The test seems rather to be if you do not adopt the same measure of precaution as is necessary to obtain compensation from the Post Office, can you obtain compensation from the insurance company.

LAWRENCE W. GILL.

The Equitable Trust Company of New York,
10 Moorgate, E.C.2,
12th October.

[The custom of outside insurance probably originated from the circumstances that many bankers' packages will not fit any of the registered envelopes sold by the Post Office, from which it would follow that liability would be disputed and compensation refused. It is, therefore, an implied term in such insurance policies that (*a*) the company will waive compliance with the regulations of the Postmaster-General in the above respect, and (*b*) the defence of contributory negligence (under that head) will not be raised. The test suggested in the last paragraph of your letter is, therefore, not a true one, owing to the impossibility of adopting the same measure of precaution in the two cases. The term "registered post" in the policy means taking such precautions as will ensure that the package travels in special bags, which are signed for at each stage of their journey—the use of a special envelope being only a condition precedent to a claim against the Post Office.

The consideration for the policy must be the assumption of some risk by the company, and if all the regulations were complied with, the bank would be entitled to claim against the Post Office, so that the company would be undertaking no risk. The opinion is therefore expressed, that the company would be liable on the simple registration of notes in an ordinary envelope.—ED., *Sol. J.*]

Substituted Service of Writs.

Sir,—The letter from Mr. A. Glenton Lewis (which appeared in your issue of the 19th inst, at p. 673) makes interesting reading, because we happen to have a case where our clerk attended on a defendant in the suburbs on four occasions. He was unable to find the debtor, but on the day of the first attendance we sent a letter through the post enclosing copy writ, and two days afterwards the defendant wrote acknowledging to have received the writ. In his letter the defendant stated that he would call upon us to be served, but he failed to keep the appointment. Notwithstanding this no order was allowed for substituted service, but the Master made a note that we had to attend again

at the defendant's house. There are however many worse instances than this.

Last week we had occasion to endeavour to enforce a committal warrant which was in the hands of the bailiff, who was walking about with this and other warrants. Our clerk called on the defendant and immediately sent to the court (about half a mile from this address) for the bailiff, but we were informed he was not available and that he had the warrant in his pocket, in the meantime our clerk was walking about the streets in conversation with the defendant. The defendant called at our office next morning, and we kept him as long as possible whilst the bailiff was sought for—we were again informed he was out with the warrant in his pocket.

The remedy we venture to suggest for the last state of affairs is as follows :—

> The adoption of a county court order or rule providing for a committal warrant to be handed to the creditor in order that the defendant may be seized, at any place at which he is found by the creditor, by a police officer.

On making the above suggestion to the County Courts Department, we received a letter from the Home Office, saying that "legislation would be required for carrying the suggestion into effect."

In such a way the law allows unscrupulous debtors to give endless trouble to creditors.

In another county court case we are dealing with, the bailiff has made an affidavit that he attended to serve the defendant at his residence with default summons on *twenty-one occasions*, and failing to meet with the defendant, he *ultimately* obtained an order for substituted service. The control of the county court system seems to allow this state of affairs to persist. We see no reason why on the second call upon the defendant, the summons should not be left and after that a substitution order made.

London, W.1, A. E. Hamlin & Co.
21st October.

"Overtime Payments to Farm Workers."

Sir,—With reference to the article on p. 638 of The Solicitors' Journal of 5th October, 1929, under the head of "Practice Notes," the case referred to was *Seabrook & Sons, Ltd.* v. *Jones*, though by a mistake during the hearing it was cited as *Jones* v. *Harris*. This was, however, subsequently corrected. In *Seabrook & Sons, Ltd.* v. *Jones* (reported in 1929, 1 K.B., at p. 335), the head-note reads as follows :—

> "By an order of the Agricultural Wages Board, embodying orders of a wages committee, 'Where a whole-time male worker is employed by the week or any longer period and the hours of work agreed between the worker and the employer in any week (excluding hours of overtime employment) are less than 50 in summer and 48 in winter, the rate of wages applicable to that worker shall be such as to secure to the worker the wages which would have been payable if the agreed hours had been 50 in summer or 48 in winter as the case may be.'"

The appellants employed one T as an agricultural labourer by the week of fifty hours at 30s. per week. On Good Friday, T, according to custom, was not required by the appellants to work, and in consequence they refused at the end of the week to pay him his full weekly wages, deducting the portion appropriate to that day, but gave him, according to their custom, a small bonus instead.

Held, that the above order was *intra vires*, and that T was entitled to be paid 30s. for the Good Friday week.

The writer of this letter was conducting the case.

D. F. Leafe.

Ministry of Agriculture and Fisheries,
10, Whitehall Place, S.W.1.
21st October.

[We are much obliged to our subscriber for his letter.—Ed., *Sol. J.*]

Notes of Cases.

Privy Council.

Edwards *v.* **Attorney-General of Canada.** 18th October.

Canada—Eligibility of Women to become Members of Senate—British North America Act, 1867, s. 24.

This was an appeal from a judgment of the Supreme Court of Canada, which had decided that the words "qualified persons" in s. 24 of the British North America Act, 1867, did not include women, and consequently that women were not eligible to be summoned to and become members of the Senate of Canada. Section 24 was as follows: "The Governor-General shall from time to time in the Queen's name by instrument under the great seal of Canada summon qualified persons to the Senate and subject to the provisions of this Act every person so summoned shall become and be a member of the Senate."

The Lord Chancellor (Lord Sankey), in delivering judgment, said their lordships were of opinion that the word "persons" in s. 24 did include women, and that women were eligible to become members of the Senate. If Parliament had intended to limit the word "persons" to male persons, it would surely have manifested such intention by an express limitation as it had in ss. 41 and 84. A heavy burden lay on an appellant who sought to set aside a unanimous judgment of the Supreme Court, and the Board would only set aside such a decision after convincing argument and anxious consideration, but having regard (1) to the object of the Act, namely, to provide a constitution for Canada; (2) that the word "persons" was ambiguous and might include members of either sex; (3) that there were sections in the Act which showed that in some cases the word "persons" must include females; (4) that in some sections the words "male persons" were expressly used when it was desired to confine the matter in issue to males; and (5) to the provisions of the Interpretation Act, their lordships had come to the conclusion that the word "persons" included members both of the male and female sex; that the question propounded by the Governor-General must be answered in the affirmative and that women were eligible to be summoned to and become members of the Senate of Canada.

Lords Darling, Merrivale, Tomlin and Sir Lancelot Sanderson concurred.

Counsel.—*N. W. Powell*, K.C. and *F. Gahan*; *J. F. Lymburn*, K.C.; *E. Lafluer*, K.C.; *The Hon. G. Lawrence* K.C., and *Theobald Mathew*.

Solicitors :—*Blake & Redden*; *Charles Russell & Co.*

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

Court of Appeal.

Vidler *v.* **Sasim.**

Scrutton, Greer and Slesser, L.JJ. 15th October.

Practice—Action for Breach of Promise—Amendment of Statement of Claim—Amendment alleging Promise by Defendant while in Prison—Amendment admitted during Trial—Statutory Disability of Convict—Plea not set up in Court of First Instance—Appeal—Plea Disallowed.—Forfeiture Act, 1870 (33 & 34 Vict., c. 23), s. 8.

Appeal from a judgment of Mackinnon, J., after trial, with a common jury, of an action for breach of promise of marriage.

The plaintiff alleged that in 1914 the defendant promised to marry her, and that she went to live at his house. Subsequently, in 1920, the defendant, who was a doctor, was sentenced to ten years' penal servitude for performing an illegal operation on a girl, who died. The plaintiff said that she remained faithful to the defendant during the years that he was in prison, and she said that while he was in prison the

defendant again promised to marry her when he came out of prison, if she remained loyal to him. The defendant denied the alleged promise and counter-claimed for the return of some goods which he said belonged to him or their value. At the trial, the plaintiff, in cross-examination, admitted that when the defendant was sent to prison she thought that the marriage was off. But she said that she visited the defendant in prison and she alleged that, in 1921, the defendant promised to marry her when he came out of prison. Thereupon the plaintiff's counsel asked for and obtained leave to amend the statement of claim by alleging against the defendant a promise of marriage in 1921. The written amendment was handed to the defendant's counsel on the second day of the trial, which lasted three days. The defendant's counsel did not put in any reply to the amendment by alleging the defendant's disability, under s. 8 of the Forfeiture Act, 1870, to make a contract while in prison, but elected to proceed with the case on the issues as they then stood. The jury found for the plaintiff on the claim and counter-claim and awarded her £400 damages. Judgment was entered for the plaintiff accordingly. The defendant appealed, and in the Court of Appeal his counsel sought to set up the plea that the defendant was disabled while in prison from making the promise alleged in the amended statement of claim by virtue of s. 8 of the Forfeiture Act, 1870. That section provides that: "No action at law or suit in equity for the recovery of any property, debt, or damage whatsoever shall be brought by any convict against any person during the time while he shall be subject to the operation of this Act, and every convict shall be incapable, during such time as aforesaid, of alienating or charging any property, or of making any contract . . ." By s. 6 of the same Act, "the expression 'convict' . . . shall be deemed to mean any person against whom, after the passing of this Act, judgment of death, or of penal servitude, shall have been pronounced or recorded by any court of competent jurisdiction in England, Wales or Ireland upon any charge of treason or of felony."

The Court (Scrutton, Greer and Slesser, L.JJ.) dismissed the appeal. While doubting whether the words of s. 8 of the Act of 1870 were capable of the wide construction sought to be placed on them by the defendant's counsel, the court did not decide the question whether that section would have afforded the defendant an answer to the amended claim, but held that the defendant, having elected to take his chance of succeeding with the jury without taking that point in the court of first instance, and failed, must not be allowed to take the point in the Court of Appeal and thereby obtain another chance with another jury relying on a point which he could have taken but did not take in the court of first instance. Appeal dismissed.

Counsel: *Gilbert J. Paull; W. B. Franklin.*

Solicitors: *F. Freke Palmer; Fosters.*

[Reported by T. W. Morgan, Esq., Barrister-at-Law.

Attorney-General *v.* Sunderland Corporation.

Lord Hanworth, M.R., Lawrence and Russell, L.JJ.,

18th October.

Local Government—Land bought for Various Purposes—Street Widening—Car Park—Discretion of Local Authority—Public Health Act, 1879, ss. 154, 164—Public Health Act, 1925, s. 68.

Appeal from a decision of Eve, J.

In 1896 the Sunderland Corporation, with the approval of the Local Government Board and acting under the powers conferred by ss. 154 and 164 of the Public Health Act, 1875, bought a piece of land in Sunderland for four purposes: (1) to provide a site for a new post-office; (2) for the widening of adjoining streets; (3) for the formation of new streets; and (4) to provide public walks and pleasure gardens. The post-office was built and the roads widened, and the rest of the land was kept by the corporation as an ornamental garden surrounded by railings, but not dedicated or open to public use. In 1927 the corporation wished to make part of the land into a car park, in pursuance of the powers given to them by s. 68 of the Public Health Act, 1925. The plaintiff, at the instance of certain relators, brought the action to restrain them, the relators' view being that as the land had been bought for four specific objects it was *ultra vires* the corporation to make the car park. Eve, J., dismissed the action. The plaintiff appealed. The court dismissed the appeal.

Lord Hanworth, M.R., in the course of his judgment, said that the corporation had acquired the land for composite purposes, and, amongst others, for street improvement. It was impossible to say that any particular part of the land had been acquired for any particular purpose, or that the corporation was tied down to any particular scheme. *Attorney-General* v. *Hanwell Urban District Council*, 48 W.R. 690; [1900] 2 Ch. 377, and *Attorney-General* v. *Pontypridd Urban District Council* [1906] 2 Ch. 257, were authorities that if a local authority bought land for a specific purpose they could not use it for a purpose quite distinct and different, but, without wishing to say anything to weaken those authorities, they could hardly apply in the present case so as to limit the wide statutory powers of the respondents, or to enable the court to hold that the properly exercised discretion of the respondents as to the *quantum* of the land to be used for each purpose could be interfered with. The appeal must be dismissed.

Lawrence and Russell, L.JJ., gave judgments to the same effect.

Counsel: *C. A. Bennett*, K.C., and *D. A. S. Cairns*, for the appellant; *Montgomery*, K.C., and *Wilfrid Hunt*, for the respondents.

Solicitors: *Ward, Bowie and Co.*, for *C. T. Stockdale*, Sunderland; *Sharpe, Pritchard and Co.*, for *H. Craven*, Sunderland.

[Reported by G. T. Whitfield-Hayes, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Preston *v.* Jackson.

Lord Hewart, C.J., Avory & Acton, JJ. 23rd November, 1928.

Food and Drugs—Sale of Vinegar—Labelled "Table Vinegar"—100 per Cent. Artificial—Information Dismissed—Appeal Offence proved on Uncontradicted Evidence—The Sale of Food and Drugs Act, 1875 (38 & 39 Vict., c. 63), s. 6—Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (1).

At a court of summary jurisdiction at Atherstone, Warwick, an information was preferred by John Edward Preston, the appellant, an inspector under the Foods and Drugs Acts, under s. 6 of the Food and Drugs Act, 1875, against George Jackson, the respondent, the keeper of a general grocer's shop, for that he, the respondent, did unlawfully sell to the appellant on 18th July, 1928, table vinegar which was not of the nature, substance and quality of the article demanded, being 100 per cent. artificial vinegar. On the hearing of the information it was proved, *inter alia*, that (i) the appellant was supplied from a 6-gallon barrel labelled "Finest Table Vinegar, pure, strong, wholesome"; (ii) the county analyst's certificate certified the vinegar purchased as 100 per cent. artificial; (iii) the appellant did not know that table vinegar was artificial vinegar; (iv) there is no fixed standard of quality by law for vinegar; (v) in genuine vinegar there must be the by-products of fermentation; and (vi) the best malt vinegar was sold at 8s. 6d. for 6 gallons, and artificial vinegar at 4s. for 6 gallons, and the respondent had paid 9s. for 6 gallons. The magistrates did not consider that any question of law was involved, and were of opinion that it would have been unjust to punish the respondent who had paid 9s. for 6 gallons

of artificial vinegar worth 4s., and they dismissed the information.

Lord HEWART, C.J., said that from the findings of fact the respondent called no evidence and did not rebut the analyst's certificate. The uncontradicted evidence was, therefore, that what was supplied to the appellant, who had asked for a pint of table vinegar, was an article which was not table vinegar but was a substitute, 100 per cent. artificial vinegar. It was said that, although artificial, the vinegar might have been genuine. That suggestion was flatly contradicted by the finding that in genuine vinegar there must be the by-products of fermentation, and here there were none. In his opinion, upon the uncontradicted facts, the only course which was open to the justices was to find that the offence was proved. With regard to counsel's submission that the justices regarded the offence as being proved but chose to act under the Probation of Offenders Act, he, his lordship, thought that that was a mere afterthought and that there was nothing in the point. The appeal succeeded and the case must go back to the justices with a direction that upon the uncontradicted evidence the true conclusion in law was that the offence which was charged was proved.

AVORY, J., delivered judgment to the same effect.

ACTON, J., agreed.

COUNSEL: *D. C. Bartley*, for the appellant; *P. E. Sandlands*, for the respondent.

SOLICITORS: *Beale & Co.: Sharpe, Pritchard & Co.*, for *T. B. Firth*, Nuneaton.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

The Law Society at Bournemouth.

ANNUAL PROVINCIAL MEETING.

[FROM OUR SPECIAL CORRESPONDENT.]

SOLICITORS AND THE NEW COMPANIES ACT.

Dr. E. LESLIE BURGIN, M.P., read a paper on this subject, and said that from time to time the public conscience is shocked by some reverberating crash in financial circles and the conversation turns to the provisions of and the gaps in our company law.

Probably it is a truism to assert that every nation has the company law it deserves, and probably, taken broadly, British company law is far better than most. At the same time, it is no accident that in the United States of America more companies are registered in the State of Delaware than in any other, nor is it purely a matter of chance that the choice for registration of a holding company should be tolerably evenly divided between Switzerland and Eastern Canada. There are reasons for these geographical selections. Suppose, for instance, that a number of companies are housed under one roof and that some dominant spirit in that wonder-world of figures of finance is a director of them all, is it the task of company law to prevent what is MEUM on Monday, TUUM on Tuesday becoming NOSTRUM after Wednesday? Can it be done merely by legislation—I think not. Can the profession to which we all esteem it such an honour to belong do something? I submit it can.

Were this a debate I should be tempted to phrase the motion in some such words as the following:—

> "That in the opinion of this house the average solicitor is not adequately equipped with a knowledge of modern company law."

I should then expect to carry such a resolution with an overwhelming majority.

We are, however, not debating any such resolution, and it is no part of my task either to express opinions or still less to pass judgment on the knowledge, or lack of it, possessed by any of my colleagues in the profession. By company law I mean, of course, the law relating to the incorporation, management and dissolution of companies, and also the body of rules governing transactions in which one of the parties is a company.

It would seem that the subject is not without serious importance.

For in any country, no matter what the legal system there prevailing may be, the company, usually the company limited by shares, is the accepted medium for trading purposes, for investment or Stock Exchange purposes, and in increasing measure for purposes of limiting or controlling the extent of taxation involved in any business transaction or operation.

It is a true maxim of business methods throughout the civilised world that "plus ca change plus c'est la meme chose," in other words, a company, by whatever name it may be called according to the language of the different countries of the globe, possesses in essence the same characteristics, the same advantages, the same flexibility, and the same pitfalls for the unwary, all the world over.

If this be a true statement of the case, and I venture to predict that the experience of those present will tend to confirm it, is it prudent for the profession as a whole to take so little notice of the law relating to companies? Surely it cannot be, and does not the coming into force of the Companies Act, 1929, provide a convenient point of departure for those who desire to embrace the subject more thoroughly than hitherto.

I am aware that in any branch of study there must be the general practitioner and the specialist, and am fully aware that the domain of company law has long been the happy hunting ground of the expert, but this does not in the least mean that the average lawyer can afford to treat the whole subject as so mysterious as wisely to be left out of his programme.

Is not the history of industrial development very largely the realisation of two great truths

(1) That an individual, however able, cannot of his own force achieve, produce and create more than a comparatively limited result.

(2) That immediately the need or the demand for any given article or idea or process reaches any sort of proportion, co-operation is essential for its production, and the co-operation usually involves the idea of a corporation of one kind or another.

This twofold idea of no growth worth noticing whilst in individual control and secondly of growth wholly beyond individual control, so soon as demand really exists, lies at the root of company formation.

Do we not have numberless instances of the layman approaching us to "form a little company" as friends, relatives, neighbours or associates are induced or perhaps even, and genuinely, desire in some measure to be connected with some given proposal?

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Such instances, of course, are merely examples of the most elementary phase of company law, viz., the private company.

The difference, however, is more one of degree than of species, although the obviously "family" character of a very large number of private companies cannot be overlooked.

It is still, no doubt, technically accurate to say that the intervention of a solicitor is not an essential to the formation of a company.

It is equally practically true that no company of real importance is either conceived, brought into being, carried on or dissolved without constant advice being obtained from a member or members of the profession.

It is with these prevailing ideas that I desire to discuss in your hearing the question of the position of the solicitor under the new Companies Act, 1929.

A fundamental change in the law is somewhat naturally resented by those especially proficient in the branch concerned. They who are used to sections, case law, decisions and actual words feel that their chosen tools, their favourite clubs, to use a more homely metaphor, are being withdrawn from them, and that without them the sense of confidence to achieve any special result no longer remains.

I am inclined to think, however, that he only is a real company lawyer, who, without reference to Act or text-book, can with a plain sheet of paper construct at will a form of words, capable of being construed by accepted rules, giving to the company the shape and design required, and avoiding with equal sureness of touch both the Scylla of the Act of Parliament and the Charybdis of the limitations of the Memorandum and Articles of Association.

The first suggestion I have to record, therefore, is that the solicitor requires fully to assimilate the provisions of the new Act; to assimilate them, not merely in a desultory or prefunctory manner, but in the practical business-like way he would a new regulation relating to the issue of his season ticket or the admission of visitors to his golf club.

The acquisition of familiarity with a branch of the law is not, however, my main purpose on these observations, but rather the suggestion that there should be a very real sense of responsibility on the part of a solicitor in the case of any matter transacted by him in which a company is involved or concerned.

After all, the formation or constitution of a company is the birth of a new legal entity, a creation, and responsibility would seem to attach almost automatically from such a fact.

True, a solicitor can only tender advice, and at the most decline further to assist if his advice is not acted upon: he cannot in any way compel acquiescence.

But whilst this is patently obvious, it is equally true that whilst the operation is in a fluid state, strong advice, capably and tactfully given and considered, is an influence of enormous power, and experience tends to show that it is one comparatively rarely disregarded.

What responsibility, is it suggested, really attaches to the solicitor engaged in the formation of a company?

I suggest that due regard should be paid to considerations of this order.

First, that the average company is inadequately capitalised, that it starts with a self-imposed (or, in my thesis, very often a solicitor-imposed) handicap. A word of correction or even of caution from the solicitor would often avoid this pitfall.

Secondly, remember that a company is no robot equipped with mind and brain, but much more resembles a convoy or association of ships, with the result that the speed of the convoy is the speed of the slowest vessel, or phrased differently, the company will have no greater aggregate wisdom than that possessed by the cleverest of its members—in fact, the tendency will be to dilute or water down this efficiency, as is the case in all committees or groups where responsibility and ideas are pooled.

Thirdly, a company intended to operate in some new and individual manner is worthy of more shaping and design than a somewhat hurried adaptation by a red ink pen of the memorandum and articles applicable to some wholly different corporation. If we consider the skill, care and attention avished upon any addition to the fleet of any well-known shipping company, we may feel some twinges of conscience at recollections of the wholly original manner in which certain memoranda and articles have been rushed into print, and of how euphemistic a description the entry in the bill "Drawing Memo. and Arts." really is.

In my opinion the time has long since arrived when the modern memorandum of association should be carefully redrawn. The present-day habit of lopping and tailing a sort of universal provider's catalogue is far from being efficient, and has the definite demerit of being completely unintelligible to a layman or incapable of translation for a foreigner, and of being of wholly unnecessary advantage to those who are printers by trade.

It seems quite illogical that to carry on an artificial silk business at Manchester it should still be necessary to get power to erect a floating dock in Borneo.

Then, fourthly, I am inclined to think the solicitor wields, or should wield, a very great influence in the actual working life of many a big company, both as regards work behind the scenes, for instance, the phrasing of minutes, the keeping of records and the general internal machinery, and also the relationship of the company to the public, this latter feature being of literally enormous importance if the true relationship between the solicitor and the accountancy professions is to be maintained.

We must, in my judgment, as a profession very definitely decline to allow the whole chapter of the relationship of the company to the outside public to be relegated merely to a matter of balance sheet and auditors' certificate. Far more is involved than any valuation of assets, or any interrogation of directors and officers as to such matters as stock, book debts, or any specious phrasing of adroitly-worded certificates, the purpose of which is at least as much to avoid responsibility on the part of the signatory as it is to be a vehicle of information.

Whilst I in common with the whole of the profession have no quarrel of any sort with the sister profession of accountancy, I am quite confident that there are limits to the functions which an auditor can properly fulfil and that there remain abiding responsibilities on the part of the solicitor to the company, which our profession will be wise to recognise and wiser still most scrupulously to observe.

This is no exhaustive nor all-inclusive list, but merely some reflections prompted by the opportunity which is afforded to the profession by the coming into force of the new Companies Act.

Other suggestions would be of a supervision character. The detached method of "washing one's hands" after tendering advice can, I submit, be overdone. I do not, of course, mean to suggest that a solicitor can without instructions or invitation butt in and give advice that is neither sought for nor desired.

But without imagining anything so far fetched there is a very wide range of circumstances in which the solicitor has an opportunity which he can (and, of course, does) seize to lay a restraining or guiding hand upon decisions of the members of a board of directors of a company.

A greater sense of individual responsibility on the part of all officers towards the members of the company is to be encouraged. Alas! how much has the cause of good understanding between masters and men been retarded by unfortunate instances of great companies being obliged to re-arrange their capital and a pitiless wiping out of employees' savings ensuing. Numberless cases leap to the mind, and those who advocate investment by the staff in the business of the company have a very heavy moral responsibility to place the whole of the possibilities, if any, before the investing staff, and after investment still greater responsibility to see that through no want of care nor neglect of sound advice is any element of jeopardy introduced.

That there must be a risk of loss is, of course, inherent to the operation and I am not for one moment suggesting that the risk should be eliminated, but I want it recognised and as far as possible avoided.

Do I hear someone say all this I have done from my admission upward? Well, if so, you are to be congratulated. Some of us have not the power to make the same answer. Continue in your good doing and we will endeavour to follow.

The new Act is the result of much labour, study and deliberation and has been produced after very careful sifting of evidence. The Companies Act, 1929, is a Consolidating Act and contains within its 385 sections and its round dozen schedules much that is known and is merely re-enacted, some minor changes of a comparatively slight order, and at the same time some entirely novel provisions, which require detailed study and consideration.

The actual new provisions are capable of being grouped.

Much of the Act is concerned with penalties for various defaults or irregularities in the management and conduct of a company's affairs. Presumably the Board of Trade intends these penalties to be taken seriously. Up to the present one arithmetical problem, which has been almost incapable of solution, has been by what process is the amount of the nominal price to be reduced in order to arrive at the actual. A newspaper heading that the magistrate observes that penalties totalling £25,000 were incurred and therefore he imposed a penalty of 40s. and costs on such summons was a common incident.

A more rigorous supervision of directors, officers, secretaries, liquidators, will presumably be ushered in by the 1st November, 1929.

Another portion of the Act, and this already in force, aims at mitigating some of the scandals associated with offers of shares by sale upon the basis of some entirely unsupported letter from an official of the company in question. The tightening of such regulations was very desirable and indeed overdue.

The power to issue redeemable debentures, and still more so, redeemable preference shares, is a convenience which the commercial world has asked for and obtained.

We must all take early to heart the fact that a special resolution has changed its meaning, and that a resolution of an adjourned meeting is no longer ante-dated.

The very novel power to have the liability of directors unlimited contained in ss. 146 and 147 will probably be sparingly used, except perhaps in the larger corporations of almost national importance. The entire world will, I think, welcome the provisions as to payments to directors for loss of office. Section 150 contains much good sense and is only fair on minority shareholders who are often dissentient.

The old indemnity clause, the value of which we learned in connection with the City Equitable, goes by the board, and the limits of s. 152 require the considered attention of every draughtsman.

With regard to winding up, much that is novel is introduced both as to courts and procedure.

The provisions as to undischarged bankrupts being unable to hold the office of director or manager of a company are far-reaching and important. They are all to the good. Section 142 is an important one, and the terms of it should be noted. The section should be read in conjunction with the wide powers given by s. 217 as to restraining fraudulent persons from managing companies. The division of voluntary liquidations into members' voluntary winding up and creditors' voluntary winding up is sensible and in accordance with a very real difference in fact.

The declaration of solvency in s. 230 will probably lead to interesting discussions where the directors' estimate for various reasons turns out to be inaccurate or over sanguine.

The calling of the meeting of creditors on a creditors' voluntary winding up by s. 238 is an interesting novelty, and will probably make for effective disclosure at a much earlier date than hitherto. The section will be welcomed by liquidators and should result to the advantage of creditors.

The greater assimilation of the rules of bankruptcy and companies winding up by giving to a liquidator the power to disclaim is all to the good, and s. 267 appears again to be a workmanlike performance of considerable utility.

The Act contains provisions of a very stringent character as to accounts, fraudulent trading, and what may be called offences by officers of companies, and the similarity to the bankruptcy provisions is again to be noted.

When all is said and done, however, it is not by sections and regulations that the reign of law is perpetuated, nor confidence in institutions maintained, but by the integrity of our own profession. It is the high standard of conduct in the care of the interests of others, the strictest recognition of the obligation to account for and to justify the expenditure of the money of others, which creates this effect.

The profession is singularly able to impress upon the commercial community the standard of an exemplary paterfamilias, and I venture to express the hope that our attitude towards the new Companies Act may show our appreciation of the fact.

Societies.

Bristol Incorporated Law Society.

The Fifty-ninth Annual General Meeting of the above Society was held on Monday, the 7th inst., when the following report was presented by the Council, pursuant to the articles of association :—

Report :—

"Legislation.—The Council draw attention to the following Acts of Parliament. 19 Geo. 5 : Law of Property (Amendment) ; Local Government ; Unemployment Insurance. 19 & 20 Geo. 5 : Age of Marriage ; Agricultural Rates ; Bastardy (Witness Process) ; Bridges ; Companies ; Finance ; Industrial Assurance and Friendly Societies ; Infant Life (Preservation) ; Savings Banks. 20 Geo. 5 : Land Drainage.

"The following Measures have been passed by the National Assembly of the Church of England and received the Royal Assent this year : Parochial Registers and Records ; Representation of the Laity ; Ecclesiastical Dilapidations (Amendment) ; Westminster Abbey.

"Poor Persons Committee.—This Committee during the past year (April, 1928—March, 1929), dealt with 36 applications for legal assistance. Of these 24 were granted, 1 deferred and 11 refused. All 24 applications granted have been allotted to solicitors to conduct. Eleven divorce cases have been heard. The Council desire to thank those solicitors who have undertaken the conduct of these cases, and again ask members who have not already done so to allow themselves to be placed on the rota, so that the work may be fairly distributed.

"Legal Education—School of Law.—A grant of £600 has again been received this year from The Law Society by the Bristol and District Board of Legal Studies. Courses of Lectures have been given as follows : Nine for Final Students, three of these being given by Mr. Malcolm M. Lewis, M.A., LL.B., Cantab., Director of Legal Studies, on Conveyancing ; three by Mr. A. M. Wilshere, M.A., LL.B., on Common Law ; and three by Mr. W. W. Veale, LL.M. (Lond.), two on Company Law and one on Real Property. Six Courses have been given for Intermediate Students on the Subject Matter of Stephen's Commentaries, three being given by Mr. Lewis and three by Mr. Veale. Mr. Lewis also gave three Courses of Lectures on Constitutional Law, three on Jurisprudence and three on Roman Law. The total number of Students attending these Lectures was 50. Seven attended from Bath, three from Cheltenham, one from Bridgwater, one from Glastonbury, three from Gloucester, two from Stroud, one from Swindon, one from Taunton, one from Trowbridge, one from Wells, five from Weston-super-Mare, one from Yeovil, and there were four Bar Students. The remaining nineteen were local Students.

"During the year twenty-two Articled Clerks passed the Examinations of The Law Society, of whom twelve passed the Final Examination, two the Intermediate, three the Intermediate (Legal Portion), and five the Book-keeping portion only.

"A prize in books to the value of £6 6s. has been awarded to Mr. A. R. Boucher, articled to Mr. A. S. Brookes, who obtained a Second Class at the Honours Examination held in June last, and prizes in books to the value of £3 3s. have been awarded to Mr. F. A. Luke, articled to Mr. C. E. Barry, Mr. D. L. M. Steel, articled to Mr. E. R. Tanner, M.A., LL.B., and to Mr. M. S. Turpin, B.A. Oxon, articled to Mr. H. T. Locock, B.A., these having each obtained a Third Class at the above Examination.

"Solicitors' Clerks' Pensions Scheme.—The Council beg to report that The Law Society have had under consideration the establishment of a Solicitors' Clerks' Pension Scheme on a contributory basis and have invited the views of the Provincial Societies. The Council have carefully considered the matter and have expressed the opinion that the existence of such a Scheme would be advantageous. At the same time the Council are unable to form an opinion as to the extent to which such a Scheme would be adopted. A draft Trust Deed has been prepared by The Law Society and is still under consideration by the Council and the other Provincial Societies.

"The Council regret to have to report the deaths of Mr. H. N. Abbot, M.A. Oxon. Mr. Abbot served on the Council from 1875 to 1893, being Joint Hon. Secretary 1875 to 1885, and Joint Hon. Secretary and Treasurer from 1885 to 1893 ; also of Mr. John Light, Mr. A. W. Page, J.P., Mr. R. E. Pullen, and Mr. J. W. Ward.

"The Council beg to acknowledge with thanks the presentation of the following books to the Library :—

"Bristol Bye-Laws :— Employment of Children Act 1903 Good Rule and Government Houses let in Lodgings Offensive Trades Slaughter Houses Tents, Vans, Sheds, &c., used for Habitation	By the Town Clerk.
Stubbs' Directory, 1929	By Stubbs' Directories, Ltd.
Swarbrick Easements of Light, 1929 (Pamphlet)	By Joseph Swarbrick and Son.

"The Council also beg to acknowledge with thanks the presentation to the Society by Mr. R. L. Austin of a frame containing three sketches by the late Sir Frank Lockwood, Q.C.

"The Members of the Council retiring by rotation are Mr. W. S. A. Brown, Mr. E. A. Harley and Mr. F. Richardson. The Council nominate Mr. E. A. Harley for re-election in exercise of their power under the 4th Article of Association.

"T. Murray Sowerby, *President.*
"S. J. Bayliss } *Hon. Secs.*
"J. R. Ware }"

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Hall on Tuesday, the 15th inst. (Chairman, Miss D. C. Johnson), the subject for debate was: "That the modernist movement offers the only hope of a revival of religion in England." Mr. E. G. M. Fletcher opened in the affirmative. Mr. W. S. Jones opened in the negative. The following members also spoke: Messrs. T. M. Jessup, J. H. G. Buller, G. Thesiger, E. F. Iwi, C. F. S. Spirrell, G. Roberts, A. L. Ungoed-Thomas, R. D. C. Graham, H. J. Baxter, G. Erskine, W. M. Pleadwell, and T. F. Ginnett. The opener having replied, the motion was defeated by one vote. There were twenty-two members and two visitors present.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, the 22nd inst, (Chairman, Mr. J. C. Christian Edwards), the subject for debate was "That the case of *Watt* v. *Longsdon* (1929), 45 T.L.R. 619, was wrongly decided." Mr. T. M. Jessup opened in the affirmative; Mr. J. M. Buckley seconded in the affirmative. Mr. K. Glazebrook opened in the negative; Mr. E. J. C. Brown seconded in the negative. The following members also spoke: Messrs. C. F. S. Spurrell, C. C. Ross, T. F. Ginnett, P. H. North Lewis, C. Martin, A. Baker, C. N. Bushell and W. M. Pleadwell. The Opener having replied, and the Chairman having summed up, the motion was lost by nine votes. There were twenty members and three visitors present.

Solicitors' Benevolent Association.

The monthly meeting of the Directors of this Association was held at The Law Society's Hall, Chancery-lane, on the 16th inst., Mr. H. W. Michelmore (Exeter) in the chair, the other Directors present being: Sir Norman Hill, Bart., and Messrs. C. S. Bigg (Leicester), A. C. Borlase (Brighton), E. R. Cook, T. S. Curtis, O. J. Humbert, E. F. Knapp-Fisher, C. G. May, H. A. H. Newington, J. F. Rowlatt, P. J. Skelton (Manchester), M. A. Tweedie and A. B. Urmston (Maidstone).

One thousand eight hundred pounds was distributed in grants of relief: thirty-five new members were admitted and other general business transacted.

Royal Courts of Justice, Ulster.

On Saturday last, 19th inst., the foundation stone of the new Royal Courts of Justice at Belfast was laid by His Grace the Governor of Northern Ireland (The Duke of Abercorn, K.G., K.P.), whilst the First Commissioner of Works, Mr. George Lansbury, M.P., presided at the ceremony. A large and representative company attended. The proceedings began with the presentation to the Governor, by the Minister in attendance (The Right Hon. Sir Dawson Bates, M.P.), of the following:—

The Lord Chief Justice (The Right Hon. William Moore); The Attorney-General (The Right Hon. A. B. Babington, K.C., M.P.); The Judges of the Supreme Court (The Right Hon. Lord Justice Andrews, The Right Hon. Lord Justice Best, The Hon. Mr. Justice Wilson and The Right Hon. Mr. Justice Brown); The President of the Incorporated Law Society of Northern Ireland (Mr. John G. H. Wilson); The Architect of the building (Mr. J. G. West), and the Clerk of the Works (Mr. Geo. Johnston).

The laying of the foundation stone followed, after which a fanfare was sounded, and a short service of dedication took place.

A vote of thanks to the Imperial Government for the gift of the new Courts was then proposed by the Lord Chief Justice, who remarked in the course of his admirable speech: "We feel that it is a compliment to us that you, sir, a Cabinet Minister, and the holder of the high office of His Majesty's First Commissioner of Works, should have come over here to preside so worthily at this function; and I trust that you will allow me in your presence, without any suggestion of ingratitude, to express the hope that, having waited seven years for our Leah—the foundation stone—you, sir, being, I am told, not Laban, but Labour, will see that we shall not be obliged to serve a further seven years for our Rachel—the finished building."

The Attorney-General and the President of the Incorporated Law Society supported the expression of thanks.

Mr. Lansbury replied, assuring the Lord Chief Justice that the judges might expect to be in their new home by the autumn of 1932, and expressing his confidence that the new building would provide a place where the poorest citizen might find redress as readily and easily as the most wealthy.

The new buildings occupy a central position in Chichester-street, on a site formerly used by the Belfast Corporation as a market. They are to contain two King's Bench courts, a Chancery court and Court of Appeal; the various Supreme Court offices; accommodation for barristers and solicitors; the Bar Library; and a post office. A separate section of the building will house certain offices of the Government of Northern Ireland, which it has been decided not to transfer, along with the main administrative departments, to Stormont on the outskirts of the city. These city offices will include the Public Record Office, Estate Duty and Stamp offices, and the offices of the Registrar of Companies, Friendly Societies, etc., and Registrar-General. The buildings are designed in the Renaissance style, and the plans have been prepared by Mr. West, of H.M. Office of Works. The Supreme Court is at present accommodated in the Court House, Crumlin-road, a building intended for local business only.

The Courts of Justice are being provided at the cost of the Imperial Exchequer, as part of the constitutional settlement in Northern Ireland. Under that arrangement the ultimate incidence of the "running" cost of the Ulster Supreme Court is upon the local taxpayer, whilst the initial expenditure on buildings, due to the transfer of the Judicature from Dublin, is in the nature of an "endowment." In former days the Irish "Four Courts"—of Chancery, King's Bench, Common Pleas and Exchequer—were housed in the magnificent building of that name which was built on the north bank of the River Liffey at Dublin, from designs by Cooley and James Gandon. The foundation stone of the "Four Courts," like that of the Ulster Courts, was laid by the Crown representative—Charles, Duke of Rutland, Lord Lieutenant of Ireland—the event taking place on 13th March, 1786. The building took fourteen years to complete; one wonders whether this length of time was also in the mind of the Lord Chief Justice of Northern Ireland when he made the allusion above quoted, to the two periods of seven years.

Legal Notes and News.

Honours and Appointments.

Mr. J. V. Morley, solicitor, Lindesey (Lincs), has been appointed Assistant Solicitor in the office of Mr. Harold King, the Clerk of the Peace and Clerk to the Somersetshire County Council. Mr. Morley was admitted in 1925.

Mr. R. Cripps, clerk to the Hungerford and Ramsbury Board of Guardians, has been appointed Public Assistance Clerk to the Berkshire County Council.

Mr. William Llewellyn Jones, solicitor, of the firm of Sharman & Trethewy, Bedford, has been appointed a Notary Public for Bedford and a radius of fifteen miles. Mr. Jones was admitted in 1900.

Wills and Bequests.

Mr. David Thomas Willis, of The Grange, Heath and Reach, Beds, left estate of the gross value of £5,918.

Mr. Edwin Parker, solicitor, of Arden, Colwell Bay, Totland, Isle of Wight, left estate of the gross value of £5,214.

The Directors of the Alliance Assurance Company have acceded with much regret to Mr. Sidney T. Smith's request to be allowed to retire from the Secretaryship of the Company after over forty-eight years' service. To fill the vacancy, Mr. P. F. Nicols, the Assistant Secretary, has been appointed Secretary, and Mr. A. E. Welch has been appointed Assistant Secretary.

PATENTS COMMITTEE.

The Board of Trade announce that the Committee, set up (under the Chairmanship of The Right Hon. Sir Charles Sargant) to consider whether any amendments in the Patents and Designs Acts, or any changes in Patent Office practice, were desirable, are continuing their meetings at the Board of Trade for the purpose of hearing evidence from interested persons and associations. Four meetings of the Committee took place before the vacation, and during the next few weeks evidence will be taken from representatives of Trade Marks, Patents and Designs Federation, Limited, the British Science Guild, the London Chamber of Commerce, the International Association for the Protection of Industrial Property (British Group), the Association of British Chemical Manufacturers and the Chartered Institute of Patent Agents.

Any persons or associations who desire to submit any further suggestions, or to give evidence, are invited to communicate with the Secretary, Mr. R. W. Luce, Industrial Property Department, Board of Trade, 25 Southampton Buildings, W.C.2.

AMERICAN "SHARE PUSHER" SENT TO PRISON.

Louis Gordon, alias Murray Kohl, an American citizen, who refused his address and occupation, was, says *The Times*, at Bow-street Police Court on Thursday in last week, sentenced by Sir Chartres Biron to six months' imprisonment and recommended for deportation for making a false statement for the purpose of procuring a passport. Mr. Myers defended.

Mr. R. M. Howe, for the Director of Public Prosecutions, said that Gordon filled in an application for a passport dated 17th September. He gave the name of Louis Gordon, with an address in Gore-street, Kensington, and described himself as a British subject by birth. He got a Dr. Wolff to vouch for him as a fit and proper person to have a passport. It had since been ascertained that he did not live in Gore-street, and that he was not born in England. On 10th October Detective-Inspector Passmore was keeping observation upon him in Tottenham Court-road, and asked him for his papers of identity. Gordon replied "I am an American citizen and have no papers." As he refused to give his address or any particulars about himself, he was brought to Bow-street and charged originally with an offence under the Aliens Act.

Dr. Sidney Wolff, a registered medical practitioner, whose address was not given, said that on 13th September he signed an application for a passport by Gordon, whom he knew only as a patient. Replying to the magistrate, the witness said that he did not know that the address that Gordon gave was wrong.

Mr. Myers said that Gordon was an American fruit merchant, living in Paris with his wife and family. He came over here with a week-end ticket for the purpose of engaging in a big fruit deal. Instead of sending over to Paris for his papers, he went to Dr. Wolff, whom he knew, to get his passport application signed. As soon as his business over here was completed it was his intention to return to Paris. He was not a criminal, and he was anxious to get away from this country as soon as possible.

Detective-Sergeant Hudson said there was no doubt that Gordon was identical with an American citizen named Murray Kohl, who first came to this country on 7th June, 1925. He was then living in Hans-road, Knightsbridge. Inquiries were then proceeding about the alleged foisting by certain Americans of worthless shares on the public in this country. Gordon was known to be associated with these people, and when he left the country in September following the Home Office directed that if he returned he was to be strictly interrogated as to his business. In May, 1925, he had been refused permission to land at Folkestone, but in the following month he was back in this country and registered with the police. The records showed that on 18th June in the same year he arrived at Croydon by air and was refused permission to land. Again, on 20th October, 1926, he was refused permission to land at Harwich. On 13th May last it was circulated to all ports and passport controls that he was not to be allowed to re-enter the country.

Sir Chartres Biron: How did he get into the country?—Presumably on a week-end ticket, by getting someone over here to send him the return half of a ticket to Paris. There is no doubt this man is an associate of American high-pressure share salesmen.

Sir Chartres Biron said he could not think of a much worse case. It showed how undesirable and discreditable it was for people to vouch for passports persons about whom they had absolutely no knowledge.

MAINTENANCE ORDERS QUASHED.

During the hearing of two matrimonial appeals from magistrates heard in the Divisional Court of the Divorce Division on the 17th inst., before the President (Lord Merrivale) and Mr. Justice Hill, an important point was raised. Section 1 of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, provides that an application for a maintenance order by a married woman on the ground of cruelty or neglect to maintain may be made notwithstanding that the cruelty or neglect complained of had not caused her to live separately and apart from him. By the Act of 1895 a wife could not claim that relief unless she was able to satisfy the court that she had been caused by her husband's conduct to leave him.

In the two cases referred to maintenance orders had been made against the respective husbands despite the fact, as held by their lordships, *that the wives had left their husbands through no fault of the husbands.* The court quashed the order in each case.

In the first case the President said: "If an occurrence of this kind is to be regarded as a natural outcome of the amendment of the law made by the statute of 1925, whereby wilful neglect to maintain by itself gives ground to resort to justices for an order for maintennace, much closer attention than in the past must necessarily be paid to that class of proceeding. What seems to me to be requisite before a husband can be found guilty of wilful breach of his duty to maintain his wife, is that there must be a refusal to maintain, which has no explanation reasonable in common sense and in good faith as against a husband who is willing to do his duty. Where on the true facts the husband is shown to have done his duty to the utmost of his ability, never wilfully to have failed in his duty to discharge his marital obligations, taking them generally as the relations of husband and wife, I find very great difficulty in conceiving a case where a woman can come forward, disclaiming her proper obligation to her husband, and making herself a complainant in law on the ground of her own wrong."

His lordship expressed himself similarly in the second case.

Mr. Justice Hill observed: "Justices are prompt to strike out allegations of desertion or cruelty where they are not proved, but since the Act of 1925 they have tended to find wilful neglect rather lightly."

LAW OF EVIDENCE IN NORTH CAROLINA.

A law of 1777, peculiar to North Carolina and a few other States, which requires that a witness in a legal trial shall be a believer in Divine punishment after death, was brought into play recently in the trial at Charlotte of the strikers charged with the murder of the chief of police at Gastonia. A young Methodist preacher, acting for the prosecution, was allowed to spend two hours exhaustively examining the religious views of Mrs. Miller, a twenty-year-old Communist school teacher, wife of one of the defendants.

This law has seldom been used and counsel for the defence unsuccessfully protested against its revival in the present case.

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LIQUOR LAW INQUIRY.

The Royal Commission appointed to report upon the working of the licensing laws in England and Wales will begin to take evidence on Tuesday, the 6th November.

The sittings at which evidence is taken will be held in public unless the Commission should determine otherwise.

The last Royal Commission on licensing, set up in 1896, took evidence at 123 sittings and presented its report more than three years after its appointment.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	Mr. JUSTICE EVE.	Mr. JUSTICE ROMER.
M'nd'y Oct. 28	Mr. More	Mr. Jolly	Mr. Blaker	Mr. Jolly
Tuesday .. 29	Ritchie	Hicks Beach	Jolly	*Ritchie
Wednesday. 30	Andrews	Blaker	Ritchie	Blaker
Thursday . 31	Jolly	More	Blaker	*Jolly
Friday Nov. 1	Hicks Beach	Ritchie	Jolly	Ritchie
Saturday .. 2	Blaker	Andrews	Ritchie	Blaker
DATE.	Mr. JUSTICE MAUGHAM.	Mr. JUSTICE ASTBURY.	Mr. JUSTICE CLAUSON.	Mr. JUSTICE LUXMOORE.
M'nd'y Oct. 28	Mr. Ritchie	Mr. Andrews	Mr. Hicks Beach	Mr. *More
Tuesday .. 29	*Blaker	More	*Andrews	Hicks Beach
Wednesday. 30	*Jolly	Hicks Beach	*More	*Andrews
Thursday . 31	*Ritchie	Andrews	*Hicks Beach	More
Friday Nov. 1	*Blaker	More	Andrews	*Hicks Beach
Saturday .. 2	Jolly	Hicks Beach	More	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The CHRISTMAS VACATION will commence on Tuesday, the 24th day of December, 1929, and terminate on Monday, the 6th day of January, 1930, inclusive.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th September, 1929) 6½%. Next London Stock Exchange Settlement Thursday, 7th November, 1929.

	MIDDLE PRICE 23rd Oct.	INTEREST YIELD. £ s. d.	YIELD WITH REDEMPTION. £ s. d.
English Government Securities.			
Consols 4% 1957 or after	83	4 16 5	—
Consols 2½%	54	4 12 7	—
War Loan 5% 1929-47	102¼	4 17 10	—
War Loan 4½% 1925-45	95	4 14 9	4 19 0
War Loan 4% (Tax free) 1922-42	100	4 0 0	3 19 9
Funding 4% Loan 1960-1990	85	4 14 2	4 15 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	91½	4 7 5	4 9 9
Conversion 4½% Loan 1940-44	95½	4 14 3	4 18 3
Conversion 3½% Loan 1961	74¼	4 14 3	—
Local Loans 3% Stock 1912 or after	61¾	4 17 2	—
Bank Stock	244	4 18 4	—
India 4½% 1950-55	84	5 7 2	5 13 0
India 3½%	65	5 7 8	—
India 3%	56	5 7 2	—
Sudan 4½% 1939-73	92	4 17 9	4 19 0
Sudan 4% 1974	82	4 17 7	5 0 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years)	81	3 14 1	4 5 3
Colonial Securities.			
Canada 3% 1938	86	3 9 9	4 19 0
Cape of Good Hope 4% 1916-36	91	4 7 11	5 12 0
Cape of Good Hope 3½% 1929-49	80	4 7 6	5 2 0
Commonwealth of Australia 5% 1945-75	93	5 7 6	5 8 0
Gold Coast 4½% 1956	93	4 16 9	4 19 9
Jamaica 4½% 1941-71	92	4 17 10	4 19 0
Natal 4% 1937	91	4 7 11	5 11 3
New South Wales 4½% 1935-45	86	5 4 8	5 17 6
New South Wales 5% 1945-65	93	5 7 6	5 9 0
New Zealand 4½% 1945	92	4 17 10	5 5 6
New Zealand 5% 1946	100	5 0 0	5 0 0
Queensland 5% 1940-60	92	5 8 8	5 9 9
South Africa 5% 1945-75	100	5 0 0	5 0 0
South Australia 5% 1945-75	93	5 7 6	5 8 3
Tasmania 5% 1945-75	93	5 7 6	5 8 3
Victoria 5% 1945-75	93	5 7 6	5 8 3
West Australia 5% 1945-75	93	5 7 6	5 8 3
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	61	4 18 4	—
Birmingham 5% 1946-56	100	5 0 0	5 0 0
Cardiff 5% 1945-65	99	5 1 0	5 1 0
Croydon 3% 1940-60	68	4 8 3	5 2 0
Hull 3½% 1925-55	76	4 12 1	5 4 0
Liverpool 3½% Redeemable by agreement with holders or by purchase	71	4 18 7	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	51	4 16 3	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	61	4 18 4	—
Manchester 3% on or after 1941	61	4 18 4	—
Metropolitan Water Board 3% 'A' 1963-2003	60	5 0 0	—
Metropolitan Water Board 3% 'B' 1934-2003	63	4 15 3	—
Middlesex C. C. 3½% 1927-47	81	4 6 5	5 2 6
Newcastle 3½% Irredeemable	70	5 0 0	—
Nottingham 3% Irredeemable	60	5 0 0	—
Stockton 5% 1946-66	100	5 0 0	5 0 0
Wolverhampton 5% 1946-56	100	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	79	5 1 3	—
Gt. Western Rly. 5% Rent Charge	95½	5 4 9	—
Gt. Western Rly. 5% Preference	89	5 12 4	—
L. & N. E. Rly. 4% Debenture	73	5 9 7	—
L. & N. E. Rly. 4% 1st Guaranteed	70	5 14 4	—
L. & N. E. Rly. 4% 1st Preference	64	6 5 0	—
L. Mid. & Scot. Rly. 4% Debenture	76	5 5 3	—
L. Mid. & Scot. Rly. 4% Guaranteed	72⅛	5 10 4	—
L. Mid. & Scot. Rly. 4% Preference	67	5 19 5	—
Southern Railway 4% Debenture	76	5 5 3	—
Southern Railway 5% Guaranteed	95	5 5 3	—
Southern Railway 5% Preference	84	5 19 1	—

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